



R-22

Date: July 3, 2012
To: Honorable Mayor and City Council
From: Councilmember Patrick O'Donnell, Chair, State Legislation Committee
Subject: **HOMEOWNER BILL OF RIGHTS**

The State Legislation Committee, at its meeting held Monday, June 11, 2012, considered communications relative to the above subject.

It is the recommendation of the State Legislation Committee that the City Council concur in the recommendations of the Committee to take no position on SB 1470 and SB 1471; a support position on SB 1472; and a support-if-amended position on SB 1473, a Homeowner Bill of Rights.

Respectfully submitted,

STATE LEGISLATION COMMITTEE

Councilmember Patrick O'Donnell, Chair

Prepared by:
Carolyn Harris



Date: June 25, 2012

To: Mayor and Members of the City Council

From: Councilmember Patrick O'Donnell, Chair of the State Legislation Committee *PO*

Subject: Recommendation to request the City Council adopt legislative positions on the Homeowner Bill of Rights as recommended by the State Legislative Committee

On May 8, 2012, the Long Beach City Council voted to have the State Legislation Committee review, deliberate and report back to the City Council its findings and recommendations concerning the Homeowner Bill of Rights. A meeting of the State Legislation Committee was held on June 11, 2012. The Committee discussed the Homeowner Bill of Rights and forwarded the following recommendations to the City Council for adoption.

Homeowner Bill of Rights

Regarding the four bills from the Homeowner Bill of Rights, as it was forwarded to the Committee for consideration, the Committee recommends no position on SB 1470 and SB 1471; a support position on SB 1472; and a support-if-amended position on SB 1473.

SB 1470 and SB 1471 would amend the State of California's foreclosure laws. Both bills are currently in a special conference committee. Those specific bills will not be moving forward in the 2012 State Legislative Session, but it remains to be seen if a compromise bill will move forward this year. The Special Conference Committee is still discussing compromise language, and specifics on that item have not been released. Given the complexity of this subject and the fact that no compromise language is available for review, the Committee is recommending no position at this time.

SB 1472 addresses blight by providing new homeowners of foreclosed properties with up to 60 days to remediate code violations before those violations are subject to citations. Given that this relief may have positive benefits for neighborhoods that are suffering from the foreclosure crisis, the State Legislative Committee recommends a support position on this bill.

SB 1473 focuses on tenant rights as they may apply when foreclosed properties transfer ownership. The bill requires new owners to provide tenants with 90 days notice to vacate, rather than 60 days, as is currently required; and requires new owners of foreclosed properties to recognize active leases on the property, unless the new owner plans to occupy the residence as their primary place of residence or if the lease was entered into within 15 days of the complete title transfer. The State Legislative Committee recommends support for this bill if amendments are taken to recognize the federal Protecting Tenants at Foreclosure Act (PTFA) of 2009. PTFA tenant protections extend to tenants who have entered into leases before the date on which complete title is transferred as a result of a foreclosure.

Fiscal Impact: There is no fiscal impact to taking positions on these bills, as State advocacy is budgeted in the City Manager's Office.

Recommendation: Respectfully request the City Council adopt legislative positions as recommended by the State Legislative Committee on June 11, 2012.



Date: May 17, 2012
To: State Legislation Committee Staff
From: Larry Herrera, City Clerk
Subject: City Council Referral to the State Legislation Committee

At the City Council meeting held Tuesday, May 8, 2012, the following agenda item was referred to the State Legislation Committee:

**SUPPORTING CALIFORNIA ATTORNEY'S GENERAL'S
"HOMEOWNER BILL OF RIGHTS"**

Councilwoman Schipske moved, seconded by Councilwoman Gabelich that the communication be referred to the State Legislation Committee.

LARRY G. HERRERA
City Clerk

Prepared by:
Carolyn Harris

Attachment

cc: Patrick H. West, City Manager
Suzanne Frick, Assistant City Manager
Reginald I. Harrison, Deputy City Manager
Tom Modica, Director of Government Affairs



City of Long Beach
Working Together to Serve

Office of Gerrie Schipske, R.N.P., J.D.
Councilwoman, Fifth District

Memorandum

R-6

Revised

Date: May 8, 2012

To: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

From: Councilwoman Gerrie Schipske, Fifth District *GS*
Councilmember Rae Gabelich, Eighth District *RG*
Councilmember Steven Neal, Ninth District *SN*

Subject: **AGENDA ITEM: Supporting California Attorney General's "Homeowner Bill of Rights"**

Discussion: The City of Long Beach has experienced over 2,000 foreclosures of homes. The problems continue with homeowners not being able to obtain loan modifications and other arrangements so that they can keep their residences. California State Attorney General Kamala Harris recognizes that several changes need to be made in law that would make significant improvements in the way the state regulates mortgage lenders in order to protect homeowners. She is proposing a package of reforms that the State Assembly and State Senate are currently considering. These reforms would increase protections for mortgage borrowers by prohibiting lenders from foreclosing on a property while simultaneously negotiating a loan modification on that property and also simplify loan documentation by establishing a single, standardized contract for foreclosures and loan restructuring. Other specific reforms include:

- Basic standards of fairness in the mortgage process, including an end to dual-track foreclosures
- Transparency in the mortgage process, including a single point of contact for homeowners
- Community tools to prevent blight after banks foreclose upon homes
- Tenant protections after foreclosures
- Enhanced law enforcement to defend homeowner rights - paid for by fees imposed on banks
- A special grand jury to investigate financial and foreclosure crime

Conclusion: The City's Foreclosure Registry indicates that current foreclosures are particularly high in most Council Districts: 1 (113); 2 (192); 3 (96); 4 (135); 5 (128); 6 (108); 7 (195); 8 (156); 9 (208). Many homeowners in the City of Long Beach are fighting to keep their homes. In the past 12 months, the real estate data firm Zillow found that the value of 74 percent of all Long Beach homes has fallen and that 37 percent of Long Beach homes were underwater - with their homes selling for less than the amount originally paid and - severely impacting the stability of the local economy. Should the economy not improve there will be many more homes in foreclosure. Proposed legislation to protect homeowners will provide the fairness that has been lacking in this situation.

HONORABLE MAYOR AND CITY COUNCIL
Supporting California Attorney General's "Homeowner Bill of Rights"
Councilwoman Gerrie Schipske, Fifth District
May 8, 2012
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Recommendations: By motion of the City Council, the following resolution is adopted supporting the "Homeowner Bill of Rights" and calling upon the City's banking partners and the Federal Housing and Finance Agency (FHFA) to suspend foreclosures and evictions until reforms to protect homeowners are put into place.

Fiscal Impact: The City of Long Beach receives over 17% of its revenues from property taxes. Without legal protections for Long Beach homeowners, the City will continue to experience a loss in property taxes due to falling real estate values and foreclosures.

Proposed Resolution:
Resolution supporting the California Homeowner Bill of Rights

WHEREAS, The United States Department of Justice (DOJ) recently entered into a \$26 billion settlement agreement with five major banks, over findings of misconduct in foreclosure activities serving as a first step towards ensuring broader investigation, due process, principal reduction, and more comprehensive restitution for borrowers who have lost their homes unjustly; and

WHEREAS, In light of mounting investigations into alleged malfeasance by banking institutions and mortgage and trustee companies, state legislators have introduced a package of bills known as the California Homeowner Bill of Rights, as encompassed in Senate Bills 1470, 1471, 1472, and 1473, to help protect homeowners from unlawful foreclosure actions and ensure due process and accountability from the mortgage industry; and

WHEREAS, Despite the DOJ settlement, and mounting evidence of banking and mortgage industry questionable practices, and filing of legislative measures to protect homeowners and tenants, there is still no immediate protection and relief for millions of homeowners whose struggling to pay their mortgage, homes are underwater, or currently facing foreclosure; and

WHEREAS, Many of these foreclosures can be attributed to predatory banking practices that disproportionately targeted racial and ethnic minority communities, especially working-class African-Americans and Latinos; and

WHEREAS, the City of Long Beach receives notice of homes with a "notice of default" on average of over 174 a month totaling approximately 2,091 homes in foreclosure; and

WHEREAS, In the past 12 months, the real estate data firm Zillow found that the value of 74 percent of all Long Beach homes has fallen and that 37 percent of Long Beach homes were underwater – with their homes selling for less than the amount originally paid and – severely impacting the stability of the local economy; and

WHEREAS, A recent survey of 260 consumer attorneys by the National Association of Consumer Advocates, the National Association of Consumer Bankruptcy Attorneys, and the National Consumer Law Center found that 90% of respondents report representing a homeowner

HONORABLE MAYOR AND CITY COUNCIL
Supporting California Attorney General's "Homeowner Bill of Rights"
Councilwoman Gerrie Schipske, Fifth District
May 8, 2012

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placed in foreclosure while awaiting a Government Sponsored Enterprise (GSE) loan and/or Home Affordable Modification Program (HAMP) loan; and

WHEREAS, California State Attorney General Kamala Harris has been a leader on holding major banks accountable for unlawful foreclosure practices and on February 27, 2012, asked for a suspension of foreclosures on loans controlled by Fannie Mae and Freddie Mac and has made similar requests of the major banks pending an investigation and proposals for principal reduction;

now, therefore, be it

RESOLVED, That the City Council directs the City lobbyists in the California State Capitol to prioritize support for the California Homeowner Bill of Rights State Bills, as encompassed in Senate Bills 1470, 1471, 1472, 1473; to urge lawmakers to modify the effective dates so that they expeditiously take effect upon passage; and to proactively advocate for the following legislation to retain the following provisions:

- SB 1470: Foreclosure Reduction Act of 2012 – Allow for the translation of notices into the six most spoken languages in California and provide for adequate time for a borrower to evaluate loan modification offers and consult a housing counselor;
- SB 1471: Due Process Reform Legislation – Require creditors to provide a single point of contact to borrowers in the foreclosure process who will be responsible for providing an accurate account and other information related to the foreclosure and loss mitigation efforts, and also authorize borrowers to challenge the unlawful commencement of a foreclosure process in court;
- SB 1472: Blight Prevention Legislation – Ensure that receivership powers should be tied to enabling low income households to occupy the property, and partnerships with qualified nonprofits should be encouraged;
- SB 1473: Tenant Protection Legislation – Clarify that local ordinances may provide additional and greater protection against eviction; and, be it

FURTHER RESOLVED, That the City Council invests over \$649.4 million in both the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) and calls on our representatives in Washington DC to urge Edward DeMarco, Acting Director of the Federal Housing and Finance Agency (FHFA), to suspend all foreclosure activities until such time FHFA has in place policies to:

- Reduce Principal – Allow Fannie Mae and Freddie Mac to offer loan modifications containing principal reduction down to market value, at least where this passes the net present value test, which will often be the case;
- Stop Dual-Tracking – Prevent Fannie Mae and Freddie Mac servicers from continuing the foreclosure process while borrowers are negotiating for a loan modification;
- Offer Tenants Long-Term Leases – Require Fannie Mae and Freddie Mac to offer tenants residing in foreclosed properties the option of a two-year lease if they wish to remain in their homes; and, be it

HONORABLE MAYOR AND CITY COUNCIL
Supporting California Attorney General's "Homeowner Bill of Rights"
Councilwoman Gerrie Schipske, Fifth District
May 8, 2012

Page 4

FURTHER RESOLVED, That the City of Long Beach urges all banks, especially our City banking partners Bank of America and Union Bank to immediately suspend foreclosure activities and evictions until a full investigation of irregularities and legal violations is conducted; and until state and federal reforms to protect homeowners from unfair and unlawful practices and a pathway to due process and principal reduction are in place.

CALIFORNIA HOMEOWNER BILL OF RIGHTS
2012 CONFERENCE COMMITTEE LEGISLATION
Kamala D. Harris, Attorney General of California

The California Legislature will consider key elements of the 2012 California Homeowner Bill of Rights in a May 10 conference committee hearing. The conference committee includes three members from each house and was convened by the Senate President pro Tem and the Assembly Speaker.

More than one million California homes were lost to foreclosure between 2008 and 2011— with an additional 500,000 currently in the foreclosure pipeline. 7 of the nation's 10 hardest-hit cities by foreclosure rate in 2011 were in California. In order to ensure transparency and fairness in this process, Attorney General Kamala D. Harris has proposed the 2012 California Homeowner Bill of Rights.

The Homeowner Bill of Rights marks the next step in Attorney General Harris' response to the state's foreclosure and mortgage crisis. The first step was to create the Mortgage Fraud Strike Force to investigate and prosecute misconduct at all stages of the mortgage process. The second step was to extract a commitment from the nation's five largest banks of an estimated \$18 billion for California borrowers. The settlement contained reforms negotiated in a thoughtful process but are only applicable for 3 years, and only to loans serviced by the settling banks.

Two key bills are being considered in the two-house conference committee. The first bill includes language that restricts the dysfunctional dual-track foreclosure process. The second bill ensures struggling homeowners will receive a single point of contact at their bank. These proposals will extend to all homeowners many of the reforms contained in the recent national mortgage settlement, and fix our broken mortgage and foreclosure process.

THE FORECLOSURE REDUCTION ACT OF 2012: This bill would extend to all distressed homeowners many of the procedural safeguards agreed to by the five major banks in the National Mortgage Settlement, including a restriction on abusive dual-track foreclosures.

HOMEOWNERS' DUE PROCESS RIGHTS ACT: This bill would provide additional protections to homeowners, including a guarantee for homeowners in foreclosure to have a single point of contact at their bank as well as an increase in penalties for robo-signing.

Bills in the Homeowner Bill of Rights to be heard outside the conference committee include:

BLIGHT PREVENTION LEGISLATION: AB 2314 (Carter) & SB 1472 (Pavley and DeSaulnier) to help combat the blight and crime associated with foreclosed properties.

TENANT PROTECTION LEGISLATION: AB 2610 (Skinner) and SB 1473 (Hancock) to help protect tenants in foreclosed properties.

ENHANCEMENT OF ATTORNEY GENERAL ENFORCEMENT ACT: AB 1950 (Davis) to strengthen the law enforcement response to mortgage and foreclosure fraud.

ATTORNEY GENERAL SPECIAL GRAND JURY ACT: AB 1763 (Davis) and SB 1474 (Hancock) to strengthen prosecutions of complex, multi-jurisdictional fraud and crimes.

Homeowners Bill of Rights Complaints & Counterpoints

Complaints by Affected Parties	Counterpoints by Affected Parties
<p>Could a bank or financial institution in compliance with the settlement still get sued for violating the legislation?</p>	<p>We are mindful of this concern and have accepted an amendment making clear that compliance with the settlement would be a defense.</p>
<p>Shouldn't we wait to see whether the Settlement works, or for the CFPB to adopt regulations?</p>	<p>The settlement leaves a huge number of California borrowers without protections that would be provided by our law.</p> <p>In addition, any regulation adopted by the CFPB may not be finalized until 2013, and then not take effect for another year. Californians cannot wait until 2014 for meaningful protection from dual track violations.</p>
<p>Could there potentially be a negative economic impact to this legislation?</p>	<p>The scenario would be worse without this legislation. In addition to losses borne by the owner of the loan, avoidable foreclosures force homeowners to incur moving expenses, lead to municipal losses in terms of lower property tax revenues, and spur blight. Each foreclosure can carry with it \$35,000 or more in costs to the community. If this dual track bill prevents 1,000 avoidable foreclosures, local communities will save \$35,000,000.</p>
<p>The penalties in this bill will only encourage frivolous litigation from borrowers seeking to delay foreclosure.</p>	<p>Although previous drafts of bill language would have allowed a borrower to reverse a foreclosure sale if specific violations are present, the final bill requires that the violations have had a material impact on the borrower and that those material violations caused the borrower to face a trustee sale. Enhanced penalties are only allowed for willful and reckless conduct. Finally, a borrower will not be able to get an injunction unless they can demonstrate that a material violation occurred.</p> <p>Industry representatives have made numerous claims regarding frivolous lawsuits but have yet to provide documentation or evidence to demonstrate their claims.</p>

<p>Borrowers will receive damages irrespective of whether they have experienced real harm, and the legislation grants remedies for failing to adequately complete documents in the very precise manner provided for in the bill.</p>	<p>These arguments are false and intentionally misleading. In order to recover damages a borrower must demonstrate material harm. Second, the bill provides an explicit exception for technical or de minimis violations that could occur through incomplete documentation. Additionally, 1602 only provides remedies for specific violations such as failure to stop the foreclosure process while a loan modification application is being evaluated. It is not designed to allow damages if a document contains an error or mistake.</p>
<p>Shouldn't we wait until national servicing standards are adopted by the Consumer Financial Protection Bureau?</p>	<p>The CFPB recently accounted the formation of national servicing standards they hope to finalized by January 2013. It is unclear what these standards will look like when finalized. Additionally, CFPB has not indicated that these standards would preempt or otherwise restrict state efforts at foreclosure and servicing reform.</p> <p>Additionally, section 1041 of the Dodd-Frank Act provides that in its administration of the federal laws transferred to it, the CFPB may not preempt state laws that are more protective than a federal consumer law counterpart. Specifically, Section 1041 states that a state's law may only be preempted if it is inconsistent with a federal consumer protection law—but an inconsistency does not include providing greater protection to a consumer.</p>
<p>Actions by federal regulators & state attorneys general may overlap and contradict.</p>	<p>Federal regulators entered enforcement orders last year against the largest 14 mortgage servicers. The attorneys general had this information going into settlement negotiations. In fact, several provisions of the settlement are also provisions that were contained in the enforcement orders, so it would appear that previous efforts do not contradict. This argument is really a smoke screen to deny the need for basic consumer protections by attempting to convey that multiple efforts are impossible. This argument has been proven false with past issues, such as consumer privacy or subprime lending reform. Both of those issues were surrounded by layers of federal law and enforcement orders, yet California passed consumer protections that have not led to contradictory laws in these areas.</p>

<p>The Settlement only applies to the five largest servicers and should not be applied to servicers who have not been found engaged in wrong doing.</p>	<p>A borrower deserves basic fairness and rights irrespective of whether their loan is serviced by a party to the settlement. Additionally, some industry trade groups seem to appreciate the standards in the settlement as outlined in a March 20, 2012 national Mortgage Bankers Association letter to the CFPB.</p>
<p>This bill will give all borrowers a right to a modification</p>	<p>This bill only requires that a borrower be evaluated for a modification if requested. It does not dictate the result of that evaluation, nor provide an inherent right to a modification.</p>
<p>This bill will help strategic defaulters.</p>	<p>In a study from July of 2009, "Moral and Social Constraints to Strategic Default on Mortgages" the authors, while finding that when negative equity reaches the 50 percent mark borrowers are 17 percent more likely to default, still found that, "It is difficult to study the strategic default decision, because it is de facto an unobservable event. While we do observe defaults, we cannot observe whether a default is strategic." Despite the unobservable nature of strategic defaults, this study attempted to reach correlations on strategic default. At this point, however, the additional evidence is mostly anecdotal as found in newspapers and other media outlets. Certainly, strategic default occurs, but to what extent is difficult to determine.</p> <p>Additionally, the legislation does not tell servicers how they must evaluate loan modification requests. <i>If the servicer determines that the borrower is a strategic defaulter then they can reject their loan modification application.</i></p>
<p>This bill will only extend the foreclosure process and delay a recovery in the housing market by preventing properties from coming to the market.</p>	<p>Under the bills, if a borrower requests a loan modification and an appeal of a negative determination, they could delay a filing by at most 45 days. However, under current timeframes it is taking over 260 days to complete a foreclosure (statute provides a minimum 112 days). Given how long the foreclosure process takes, (double the statutory length of time) the evaluations can be conducted within the current delays. Furthermore, nothing in the bill tells servicers how long they should wait to make a decision.</p>

<p>The bills allow multiple loan modification requests and will only delay the process and reward strategic defaulters.</p>	<p>Exceptions are provided in the bill concerning multiple loan modification applications. Additionally, the speed at which an evaluation is conducted is in the hands of the servicer.</p>
<p>The bills fail to require tender by borrowers as symbol of good faith.</p>	<p>Neither federal enforcement orders, nor the national mortgage settlement require tender on the part of borrowers in order to be considered for a loan modification. It is interesting that on the one hand, industry points to previous efforts as sufficient to address this problem, but would then propose a solution that is not included in those provisions.</p>
<p>You have said that these bills are intended to implement the National Mortgage Settlement, so why are there deviations?</p>	<p>We have done a very good job of drafting the bills to remain faithful to the core protection of the NMS. In general, the bills are far less onerous and prescriptive than the NMS servicing standards that cover more than forty pages of text. The NMS was drafted with judicial foreclosure states in mind, where court superintendence is part of the process. Because California is a non-judicial foreclosure state, there are places where the language needed to be adapted to the context of California law. Nevertheless, we have remained faithful to the NMS.</p>
<p>Will signatory banks be subject to conflicting obligations?</p>	<p>No. First, these bills are less prescriptive than the NMS, so if a bank is in compliance with the settlement, there will likely be no material violation of state law. Even so, we have included a safe harbor for signatories, so that compliance with the NMS servicing standards in dealings with a borrower will be a defense to a violation of state law.</p>
<p>Does the private right of action encourage frivolous class action litigation?</p>	<p>No. We believe the materiality requirement of the private right of action will bar frivolous litigation. Moreover, the foreclosure context does not lend itself to the establishment of the commonality of interest necessary to certify a class because each homeowner's circumstances are different.</p>

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RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH SUPPORTING CALIFORNIA
ATTORNEY GENERAL'S HOMEOWNER BILL OF RIGHTS

WHEREAS, The United States Department of Justice (DOJ) recently entered into a \$26 billion settlement agreement with five major banks, over findings of misconduct in foreclosure activities serving as a first step towards ensuring broader investigation, due process, principal reduction, and more comprehensive restitution for borrowers who have lost their homes unjustly; and

WHEREAS, In light of mounting investigations into alleged malfeasance by banking institutions and mortgage and trustee companies, state legislators have introduced a package of bills known as the California Homeowner Bill of Rights, as encompassed in Senate Bills 1470, 1471, 1472 and 1473, to help protect homeowners from unlawful foreclosure actions and ensure due process and accountability from the mortgage industry; and

WHEREAS, Despite the DOJ settlement, and mounting evidence of banking and mortgage industry questionable practices, and filing of legislative measures to protect homeowners and tenants, there is still no immediate protection and relief for millions of homeowners whose struggling to pay their mortgage, homes are underwater, or currently facing foreclosure; and

WHEREAS, Many of these foreclosures can be attributed to predatory banking practices that disproportionately targeted racial and ethnic minority communities, especially working-class African-Americans and Latinos; and

WHEREAS, the City of Long Beach receives notice of homes with a "notice of default" on average of over 174 a month totaling approximately 2,091 homes in foreclosure; and

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 WHEREAS, In the past 12 months, the real estate data firm Zillow found
2 that the value of 74 percent of all Long Beach homes has fallen and that 37 percent of
3 Long Beach homes were underwater - with their homes selling for less than the amount
4 originally paid and - severely impacting the stability of the local economy; and

5 WHEREAS, A recent survey of 260 consumer attorneys by the National
6 Association of Consumer Advocates, the National Association of Consumer Bankruptcy
7 Attorneys, and the National Consumer Law Center found that 90% of respondents report
8 representing a homeowner placed in foreclosure while awaiting a Government
9 Sponsored Enterprise (GSE) loan and/or Home Affordable Modification Program (HAMP)
10 loan; and

11 WHEREAS, California State Attorney General Kamala Harris has been a
12 leader on holding major banks accountable for unlawful foreclosure practices and on
13 February 27, 2012, asked for a suspension of foreclosures on loans controlled by Fannie
14 Mae and Freddie Mac and has made similar requests of the major banks pending an
15 investigation and proposals for principal reduction;

16 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
17 follows:

18 Section 1. The City Council directs the City lobbyists in the California
19 State Capitol to prioritize support for the California Homeowner Bill of Rights State Bills,
20 as encompassed in Senate Bills 1470, 1471, 1472 and 1473; to urge lawmakers to
21 modify the effective dates so that they expeditiously take effect upon passage; and to
22 proactively advocate for the following legislation to retain the following provisions:

23 A. SB 1470: Foreclosure Reduction Act of 2012 - Allow for the
24 translation of notices into the six most spoken languages in California and
25 provide for adequate time for a borrower to evaluate loan modification
26 offers and consult a housing counselor;

27 B. SB 1471: Due Process Reform Legislation - Require
28 creditors to provide a single point of contact to borrowers in the

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1 foreclosure process who will be responsible for providing an accurate
2 account and other information related to the foreclosure and loss
3 mitigation efforts, and also authorize borrowers to challenge the unlawful
4 commencement of a foreclosure process in court;

5 C. SB1472: Blight Prevention Legislation - Ensure that
6 receivership powers should be tied to enabling low income households to
7 occupy the property, and partnerships with qualified nonprofits should be
8 encouraged; and

9 D. SB 1473: Tenant Protection Legislation - Clarify that local
10 ordinances may provide additional and greater protection against eviction.

11 Section 2. That the City Council invests over \$649.4 million in both the
12 Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage
13 Corporation (FHLMC) and calls on our representatives in Washington DC to urge Edward
14 DeMarco, Acting Director of the Federal Housing and Finance Agency (FHFA), to
15 suspend all foreclosure activities until such time FHFA has in place policies to:

16 A. Reduce Principal - Allow Fannie Mae and Freddie Mac to
17 offer loan modifications containing principal reduction down to market
18 value, at least where this passes the net present value test, which will
19 often be the case;

20 B. Stop Dual-Tracking - Prevent Fannie Mae and Freddie Mac
21 servicers from continuing the foreclosure process while borrowers are
22 negotiating for a loan modification; and

23 C. Offer Tenants Long-Term Leases - Require Fannie Mae and
24 Freddie Mac to offer tenants residing in foreclosed properties the option of
25 a two-year lease if they wish to remain in their homes.

26 Section 3. That the City of Long Beach urges all banks, especially our
27 City banking partners Bank of America and Union Bank to immediately suspend
28 foreclosure activities and evictions until a full investigation of irregularities and legal

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1 violations is conducted; and until state and federal reforms to protect homeowners from
2 unfair and unlawful practices and a pathway to due process and principal reduction are in
3 place.

4 Section 4. This resolution shall take effect immediately upon its adoption
5 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

6 I hereby certify that the foregoing resolution was adopted by the City
7 Council of the City of Long Beach at its meeting of _____, 2012, by the
8 following vote:

9
10 Ayes: Councilmembers: _____
11 _____
12 _____
13 _____

14 Noes: Councilmembers: _____
15 _____

16 Absent: Councilmembers: _____
17 _____

18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____
City Clerk

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
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SB 1470 (LENO): HOMEOWNER PROTECTIONS & CHANGES TO THE FORECLOSURE PROCESS

MAY 2012

Attachment 2

Introduction

SB 1470 (Leno) would enact several changes to the rules governing the non-judicial foreclosure process for residential real property, establish an Office of Homeowner Protection to act as an ombudsperson to facilitate the resolution of borrower-servicer disputes, and provide for enforcement mechanisms, as specified.

Background

The Attorney General asserts that California is the midst of a crisis in homeownership, and that there are wide-spread problems in the mortgage servicing industry involving distressed homeowners pursuing loan modifications.

Bill Summary

Changes to the foreclosure process are immensely complicated. This proposal is detailed in the attached bill language.

Fiscal Analysis

This bill is keyed fiscal, though the Senate Banking and Financial Institutions Committee did not provide a fiscal analysis.

Support and Opposition

Supporters include:

Attorney General Kamala Harris (sponsor), AFSCME, California Church Impact, California Labor Federation, California Nurses Association, California Professional Firefighters, California Public Interest Research Group, Cambridge Credit Counseling Corporation, Center for Responsible Lending, ClearPoint Financial Solutions, Inc., Consumers Union, East Los Angeles Community Corporation, Green Path, Greenlining Institute, HomeStrong USA, International Federatio of Professional & Technical Engineers Local 21, Lutheran Office of Public Policy – California, National Asian American Coalition, National Council of La Raza – California, Nova Debt, PICO-California, SEIU, SEIU Local 1000, State Building and Construction Trades

Opposition to this bill include:

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

Legislative History

- Senate Banking and Financial Institutions Committee **Hearing cancelled*
- Conference Committee Hearing 5/10. No action taken



SB 1471 (DeSAULNIER): SINGLE POINT OF CONTACT

MAY 2012

Introduction

SB 1471 (DeSaulnier) would require mortgage servicers to offer borrowers a single point of contact with whom those borrowers may communicate regarding options that may be available to avoid foreclosure. The bill would prohibit any robo-signed document from being recorded or filed with any court, and would enact rules relating to the ability of an entity to exercise the power of sale in a mortgage or deed of trust.

Background

The Attorney General asserts that California is the midst of a crisis in homeownership, and that there are wide-spread problems in the mortgage servicing industry involving distressed homeowners pursuing loan modifications, and/or other alternatives to foreclosure.

Bill Summary

Changes to the foreclosure process are immensely complicated. This proposal is detailed in the attached bill language.

Fiscal Analysis

Though the bill is keyed fiscal, the Senate Banking and Financial Institutions Committee did not provide a fiscal analysis.

Support and Opposition

Supporters include:

Attorney General Kamala Harris (sponsor), AFSCME, California Professional Firefighters, Center for Responsible Lending, Consumers Union, Lutheran Office of Public Policy-California, PICO California, San Francisco Office of the Assessor-Recorder, SEIU

Opposition to this bill include:

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

Legislative History

- Senate Banking and Financial Institutions Committee
 - Conference Committee
- *Hearing cancelled*
Hearing 5/10. No action taken



SB 1472 (PAVELY): REAL PROPERTY - BLIGHT

MAY 2012

Introduction

The following is an analysis of SB 1472 (Pavely). This bill would extend the amount of time, from 30 days to 60 days, for a new owner of a foreclosed property to remedy code infractions before a city or county can impose a fine for the code violations.

Background

According to the Attorney General, blight remains a significant problem in communities throughout California as a result of the foreclosure crisis. Foreclosed properties can become neglected for long periods of time, during which code violations develop; and the longer the property remains vacant, the worse the violations become as there is no owner to care for the property. It is not uncommon for home values in the surrounding neighborhood to fall as these neglected foreclosed properties become blighted parts of the neighborhood.

Bill Summary

This bill seeks to address blight associated with foreclosures by providing an incentive to potential homebuyers, investors, or developers to purchase blighted properties by preventing code enforcement actions against the new purchaser for 60 days, provided repairs are being made to the property, and by making permanent existing Civil Code tools that allow local agencies to combat blight with fines of up to \$1,000 per violation per day.

Fiscal Analysis

The Senate Rules committee opines there is no fiscal impact with this bill.

Support and Opposition

As of April 26, 2012, there was no opposition to this specific bill.

Supporters include:

- Attorney General Kamala Harris (source)
- California Bankers Association
- California Chamber of Commerce
- California Credit Union League
- California Financial Services Association
- California Independent Bankers
- California Mortgage Association
- California Mortgage Bankers Association
- California Nurses Association
- California Professional Firefighters
- Public Counsel
- United Trustees Association

Legislative History

- Pass Senate Transportation and Housing (9-0) April 17, 2012
- Pass Senate Judiciary (5-0) April 24, 2012
- Pass Senate Floor (36-0) May 3, 2012



SB 1473 (HANCOCK): TENANT PROTECTIONS

MAY 2012

Introduction

The following is an analysis of SB 1473 (Hancock). This bill would provide tenants of foreclosed properties with rights to remain occupants of the property, provided that the new owner does not intend to use the location as a primary place of residence.

Background

In January 2011, Tenants Together released its third annual report entitled "California Renters in the Foreclosure Crisis." The report estimated at least 38 percent of homes in foreclosures were rentals and more than 200,000 California renters were directly affected by home foreclosures in 2010. The report indicated that the counties with the highest foreclosed rental units (5,000 or more) were Los Angeles, Riverside, Sacramento, and San Bernardino. In those counties, 45,860 renters were affected in Los Angeles; 18,823 in Riverside; 17,033 in Sacramento; and 17,356 in San Bernardino.

Bill Summary

This bill is intended to provide additional protections to tenants living in foreclosed homes. This bill revises the 60-day notice to vacate and instead provides, in the case of a month-to-month lease, for 90 days' notice for these tenants. This bill also provides that new owners of a foreclosed property must honor a tenant's lease, except in certain cases, and unless the new owner will occupy the property as his/her primary residence. In that case, the new owner must give the tenant a 90-day notice to vacate. This bill revises the notice that is sent to tenants when the property is noticed for a foreclosure sale to reflect these changes and also deletes the January 1, 2013 sunset date that otherwise applies to these provisions. This bill also permits a tenant in a foreclosed property to file a post-judgment claim of right to possession of the property.

Fiscal Analysis

The Senate Rules committee opines there is no fiscal impact with this bill.

Support and Opposition

Supporters of SB 1473 as of May 16, 2012 include:

- Attorney General Kamala Harris (source)
- California Nurses Association
- Consumers Union
- County of Santa Cruz

Opponents are:

- California Apartment Association
- California Association of Realtors

Legislative History

- Pass Senate Judiciary (3-2)
- On the Senate Floor

April 17, 2012
**Vote pending*

AMENDED IN SENATE APRIL 10, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1470

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

February 24, 2012

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, ~~and~~ 2924.13, 2924.14, 2924.15, and 2924.16 to, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1470, as amended, Leno. Mortgages and deeds of trust: foreclosure.

(1) Existing law, until January 1, 2013, requires a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower prior to filing a notice of default to explore options for the borrower to avoid foreclosure, as specified. Existing law requires a notice of default 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.

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.

The bill would establish the Office of Homeowner Protection, which 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.

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

~~(4) The bill would make a specified statement of legislative intent regarding appropriate remedies under the bill for violations of the bill's provisions.~~

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

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

1 SECTION 1. Section 2923.5 of the Civil Code is amended to
2 read:
3 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
4 agent may not record a notice of default pursuant to Section 2924
5 until 30 days after initial contact is made as required by paragraph
6 (2) or 30 days after satisfying the due diligence requirements as
7 described in subdivision ~~(g)~~ (h) and until the requirements of
8 subdivision (g) have been met.
9 (2) A mortgagee, trustee, beneficiary, or authorized agent shall
10 contact the borrower in person or by telephone in order to assess
11 the borrower's financial situation and explore options for the

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

15 ~~(b) Nothing in this subdivision shall be construed in derogation~~
16 ~~of the parties' rights established under Section 3309 of the~~
17 ~~Commercial Code. A notice of default recorded pursuant to Section~~
18 ~~2924 shall include a declaration of the following:~~

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

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

27 (3) The mortgagee, ~~trustee~~, beneficiary, or authorized agent has
28 possession of the note and mortgage or deed of trust ~~as well as all~~
29 ~~the assignments and endorsements that~~ *and evidence of its right*
30 *to foreclose, and has attached copies of evidence of all assignments*
31 *and endorsements of the mortgage or deed of trust to the*
32 *declaration including documentation of any assignments and*
33 *endorsements of the mortgage note or deed of trust. This evidence*
34 *must be attached to, or specifically described in, the declaration.*
35 If this proof cannot be located, the mortgagee, trustee, beneficiary,
36 or authorized agent shall include a separate declaration signed
37 either by an individual having personal knowledge of the facts
38 stated within, or by an individual with authority to bind the
39 mortgagee, trustee, beneficiary, or authorized agent, who certifies
40 that the declaration is based upon records that were made in the

1 regular course of business at or near the time of the events recorded,
2 stating the following:

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

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

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

10 (i) The date of execution.

11 (ii) The parties.

12 (iii) The principal amount of the loan.

13 (iv) The amortization period of the loan.

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

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

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

25 (1) That at least 60 days prior to the recording of the notice of
26 sale or as soon thereafter as possible, a written communication
27 was sent to the borrower that included all of the following
28 information:

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

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

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

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

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

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

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

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

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

23 (2) Notification that the borrower may receive, upon written
24 request *to the mortgagee, beneficiary, or authorized agent, or to*
25 *any assigned single point of contact*, a copy of the borrower's
26 payment history since the borrower was last less than 60 days past
27 due, a copy of the borrower's loan note, copies of any assignments
28 of the note and of the mortgage or deed of trust that would evidence
29 a right to foreclose on the borrower's property, and, if applicable,
30 the name of the investor that holds the borrower's loan note.

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

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

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

37 (C) The date of the last full payment.

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

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

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

4 (G) A description of any late payment fees.

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

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

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

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

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

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

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

1 on different days. Telephone calls shall be made to the primary
2 telephone number on file.

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

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

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

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

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

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

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

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

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

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

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

5 (1) The borrower has surrendered the property as evidenced by
6 either a letter confirming the surrender or delivery of the keys to
7 the property to the mortgagee, trustee, beneficiary, or authorized
8 agent.

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

14 (j) This section shall apply only to mortgages or deeds of trust
15 that are secured by owner-occupied residential real property
16 containing no more than four dwelling units. For purposes of this
17 subdivision, “owner-occupied” means that the residence is the
18 principal residence of the borrower as indicated to the lender in
19 loan documents.

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

21 2923.6. (a) *The Legislature finds and declares that any duty*
22 *servicers may have to maximize net present value under their*
23 *pooling and servicing agreements is owed to all parties in a loan*
24 *pool, or to all investors under a pooling and servicing agreement,*
25 *not to any particular party in the loan pool or investor under a*
26 *pooling and servicing agreement, and that a servicer acts in the*
27 *best interests of all parties to the loan pool or investors in the*
28 *pooling and servicing agreement if it agrees to or implements a*
29 *loan modification or workout plan for which both of the following*
30 *apply:*

31 (1) *The loan is in payment default, or payment default is*
32 *reasonably foreseeable.*

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

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

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

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

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

17 ~~(b)~~

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

24 ~~(e)~~

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

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

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

37 SEC. 3. Section 2924 of the Civil Code, as amended by Section
38 1 of Chapter 180 of the Statutes of 2010, is amended to read:

39 2924. (a) Every transfer of an interest in property, other than
40 in trust, made only as a security for the performance of another

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

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

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

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

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

34 (D) If the default is curable pursuant to Section 2924c, the
35 statement specified in paragraph (1) of subdivision (b) of Section
36 2924c.

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

39 (3) Except as provided in paragraph (4), after the lapse of the
40 three months described in paragraph (2), and the requirements of

1 Sections 2924.9, 2924.10, *and* 2924.11 have been met, the
2 mortgagee, trustee, or other person authorized to take the sale shall
3 give notice of sale, stating the time and place thereof, in the manner
4 and for a time not less than that set forth in Section 2924f.

5 (4) Notwithstanding paragraph (3), the mortgagee, trustee, or
6 other person authorized to take sale may record a notice of sale
7 pursuant to Section 2924f up to five days before the lapse of the
8 three-month period described in paragraph (2), provided that the
9 date of sale is no earlier than three months and 20 days after the
10 recording of the notice of default, and the requirements of Sections
11 2924.9, 2924.10, *and* 2924.11 have been met.

12 (5) Except as provided in subdivisions (c) and (d) of Section
13 2924g, the trustee, mortgagee, or beneficiary, or any of their
14 authorized agents shall provide written notice to the borrower
15 within five calendar days after the postponement of a foreclosure
16 sale, ~~setting forth~~ *and, if known to the trustee, mortgagee,*
17 *beneficiary, or any of their authorized agents at the time of the*
18 *notice, the new sale date and time, if any, and, if applicable, any*
19 *new location, whenever the new sale date is at least 10 calendar*
20 *days after the date of postponement.*

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

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

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

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

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

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

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

13 SEC. 4. Section 2924 of the Civil Code, as amended by Section
14 2 of Chapter 180 of the Statutes of 2010, is repealed.

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

16 2924.9. Within five calendar days after recording a notice of
17 default pursuant to Section 2924, a trustee, mortgagee, beneficiary,
18 or authorized agent shall send a written communication to the
19 borrower that includes all of the following information:

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

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

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

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

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

34 2924.10. (a) ~~When~~*If* a borrower submits an application for a
35 loan modification within 60 days after the recording of a notice of
36 default, a mortgagee, ~~trustee~~, beneficiary, or authorized agent shall
37 not record a notice of sale while the loan modification application
38 is pending. Notwithstanding paragraphs (3) and (4) of subdivision
39 (a) of Section 2924, a mortgagee, trustee, beneficiary, or authorized

1 agent shall not record a notice of sale under this section until either
2 of the following:

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

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

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

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

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

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

29 (3) *This section shall not apply if the mortgage, beneficiary, or*
30 *authorized agent has previously determined that the borrower is*
31 *not eligible for modification of that loan pursuant to Section*
32 *2923.6, unless the borrower's application reflects a material*
33 *change in the borrower's financial circumstances since the date*
34 *of the borrower's previous application.*

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

36 2924.11. (a) When a borrower submits an application for a
37 loan modification less than 15 days before a notice of sale may be
38 recorded pursuant to Sections 2924 and 2924f, a mortgagee, trustee,
39 beneficiary, or authorized agent shall not record a notice of sale
40 while the loan modification application is pending. Notwithstanding

1 paragraphs (3) and (4) of subdivision (a) of Section 2924, a
2 mortgagee, trustee, beneficiary, or authorized agent shall not record
3 a notice of sale under this section until either of the following:

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

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

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

16 *(c) This section shall not apply if the mortgagee, beneficiary,*
17 *or authorized agent has previously determined that the borrower*
18 *is not eligible for modification of that loan pursuant to Section*
19 *2923.6 or Section 2924.10, unless the borrower's application*
20 *reflects a material change in the borrower's financial*
21 *circumstances since the date of the borrower's previous*
22 *application.*

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

24 2924.12. (a) When a borrower submits a loan modification
25 application or any document in connection with a loan modification
26 application pursuant to Section 2923.6 or 2924.10, the mortgagee,
27 trustee, beneficiary, or authorized agent shall do the following:

28 (1) Provide written acknowledgment of the receipt of the
29 documentation within three business days of receipt. In its
30 acknowledgment of receipt of the loan modification application,
31 the mortgagee, trustee, beneficiary, or authorized agent shall
32 include the following information:

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

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

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

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

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

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

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

20 (1) The notice shall inform the borrower of the amount of time
21 from the date of the denial letter he or she has to request an appeal
22 of the denial of a loan modification, unless the reason stated for
23 the denial is an ineligible mortgage, an ineligible property, or if
24 the loan modification offer was not accepted by the borrower or
25 the request was withdrawn.

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

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

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

39 (d) If the mortgagee, trustee, beneficiary, or authorized agent
40 denies a borrower's appeal, the denial letter shall include a

1 description of other available loss mitigation, including short sales
2 and deeds in lieu of foreclosure.

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

4 2924.13. (a) A mortgagee, trustee, beneficiary, or authorized
5 agent shall not record a notice of sale under any of the following
6 circumstances:

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

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

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

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

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

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

33 (f) The mortgagee, trustee, beneficiary, or authorized agent shall
34 track outcomes and maintain records regarding characteristics,
35 including, but not limited to, debt-to-income ratios of modified
36 payments and the percentage change in monthly payment amounts,
37 and performance of proprietary loan modifications. A mortgagee,
38 trustee, beneficiary, or authorized agent shall provide a description
39 of *modification waterfalls*, eligibility criteria, and modification
40 terms on a publicly available Internet Web site.

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

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

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

9 *2924.14. (a) A borrower may seek an order in any court having*
10 *jurisdiction to enjoin any pending trustee's sale, if a notice of sale*
11 *has been recorded and the borrower reasonably believes that the*
12 *mortgagee, trustee, beneficiary, or authorized agent failed to*
13 *comply with the requirements of Section 2923.5, 2923.6, 2924,*
14 *2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f. Any*
15 *injunction shall remain in place until the mortgagee, trustee,*
16 *beneficiary, or authorized agent has complied with the*
17 *requirements of Sections 2923.5, 2923.6, 2924, 2924.9, 2924.10,*
18 *2924.11, 2924.12, 2924.13, and 2924f. A borrower who obtains*
19 *an injunction shall be awarded reasonable attorney's fees and*
20 *costs.*

21 *(b) (1) Following a trustee's sale, a borrower may recover the*
22 *greater of actual damages or ten thousand dollars (\$10,000) plus*
23 *reasonable attorney's fees and costs in any court of competent*
24 *jurisdiction, if the borrower reasonably believes that the*
25 *mortgagee, trustee, beneficiary, or authorized agent failed to*
26 *comply with the requirements of Section 2923.5, 2923.6, 2924,*
27 *2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f.*

28 *(2) A court may award a borrower the greater of treble actual*
29 *damages or statutory damages of fifty thousand dollars (\$50,000),*
30 *plus reasonable attorney's fees and costs, if it finds that the*
31 *violation of Section 2923.5, 2923.6, 2924, 2924.9, 2924.10,*
32 *2924.11, 2924.12, 2924.13, or 2924f was intentional or reckless*
33 *or resulted from willful misconduct by a mortgagee, trustee,*
34 *beneficiary, or authorized agent.*

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

38 *(d) Notwithstanding subdivisions (a) and (b), a borrower may*
39 *not obtain relief under this section for any violation that was*
40 *technical or de minimis in nature such that it did not impact the*

1 borrower's ability to pursue an alternative to foreclosure as
2 provided by this article.

3 (e) It shall be an affirmative defense to any liability for violation
4 of Sections 2923.5, 2923.6, 2924.9, 2924.10, 2924.11, 2924.12,
5 2924.13, and 2924.15, that a signatory to a consent judgment
6 entered in the case entitled *United States of America v. Bank of*
7 *America Corporation*, filed in the Federal District Court for the
8 *District of Washington, D.C.*, case number 1:12-cv-00361 RMC,
9 is in compliance with that consent judgment while the consent
10 judgment is in effect.

11 (f) A third-party encumbrancer shall not be relieved from
12 liability resulting from violations of Section 2923.5, 2923.6, 2924,
13 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f committed
14 by that third-party encumbrancer, which occurred prior to the
15 sale of the subject property to the bona fide purchaser.

16 SEC. 11. Section 2924.15 is added to the Civil Code, to read:
17 2924.15. Unless otherwise provided, Sections 2923.6, 2923.7,
18 2923.9, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, 2924.15,
19 and 2924f, shall apply to mortgages or deeds of trust that are
20 secured by residential real property containing no more than four
21 dwelling units.

22 SEC. 12. Section 2924.16 is added to the Civil Code, to read:
23 2924.16. (a) There shall be established within state government
24 an Office of Homeowner Protection, which shall have the
25 responsibility for all of the following:

26 (1) Responding to inquiries and complaints from individuals
27 regarding the provisions of this article.

28 (2) Attempting to seek compliance by mortgagees, trustees,
29 beneficiaries, or authorized agents with the provisions of this
30 article.

31 (3) Maintaining an Internet Web site that is capable of receiving
32 inquiries and complaints from individuals and that provides
33 information to the public about publicly available resources
34 intended to help individuals avoid foreclosure.

35 (4) Providing an annual report to the Legislature, summarizing
36 its activities during the prior year.

37 (b) It is the intent of the Legislature that the office be funded
38 through payments made available to the Attorney General via the
39 Special Deposit Fund, which was created pursuant to the

1 *settlements approved by the United States District Court for the*
2 *District of Columbia on _____.*

3 ~~SEC. 10.~~

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

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

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

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

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

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

37 (c) (1) There may be a postponement or postponements of the
38 sale proceedings, including a postponement upon instruction by
39 the beneficiary to the trustee that the sale proceedings be
40 postponed, at any time prior to the completion of the sale for any

1 period of time not to exceed a total of 365 days from the date set
2 forth in the notice of sale. The trustee shall postpone the sale in
3 accordance with any of the following:

4 (A) Upon the order of any court of competent jurisdiction.

5 (B) If stayed by operation of law.

6 (C) By mutual agreement, whether oral or in writing, of any
7 trustor and any beneficiary or any mortgagor and any mortgagee.

8 (D) At the discretion of the trustee.

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

16 (d) The notice of each postponement and the reason therefor
17 shall be given by public declaration by the trustee at the time and
18 place last appointed for sale for any postponement that does not
19 exceed nine days, otherwise, notice shall be pursuant to subdivision
20 (a) of Section 2924. A public declaration of postponement shall
21 also set forth the new date, time, and place of sale and the place
22 of sale shall be the same place as originally fixed by the trustee
23 for the sale. No other notice of postponement need be given.
24 However, the sale shall be conducted no sooner than on the seventh
25 day after the earlier of (1) dismissal of the action or (2) expiration
26 or termination of the injunction, restraining order, or stay that
27 required postponement of the sale, whether by entry of an order
28 by a court of competent jurisdiction, operation of law, or otherwise,
29 unless the injunction, restraining order, or subsequent order
30 expressly directs the conduct of the sale within that seven-day
31 period. For purposes of this subdivision, the seven-day period shall
32 not include the day on which the action is dismissed, or the day
33 on which the injunction, restraining order, or stay expires or is
34 terminated. If the sale had been scheduled to occur, but this
35 subdivision precludes its conduct during that seven-day period, a
36 new notice of postponement shall be given if the sale had been
37 scheduled to occur during that seven-day period. The trustee shall
38 maintain records of each postponement and the reason therefor.

39 (e) Notwithstanding the time periods established under
40 subdivision (d), if postponement of a sale is based on a stay

1 imposed by Title 11 of the United States Code (bankruptcy), the
2 sale shall be conducted no sooner than the expiration of the stay
3 imposed by that title and the seven-day provision of subdivision
4 (d) shall not apply.

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

9 ~~SEC. 11. It is the intent of the Legislature that there be~~
10 ~~appropriate remedies under this act for violations of the act's~~
11 ~~provisions.~~

BILL ANALYSIS

SENATE BANKING & FINANCIAL INSTITUTIONS COMMITTEE
 Senator Juan Vargas, Chair

SB 1470 (Leno et al.)
 2012

Hearing Date: April 18,

As Amended: April 10, 2012

Fiscal: Yes

Urgency: No

SUMMARY Would enact several changes to the rules governing the nonjudicial foreclosure process for residential real property, establish an Office of Homeowner Protection to help respond to borrower inquiries about and complaints regarding compliance with the new rules, and provide for enforcement mechanisms, as specified.

DESCRIPTION

OFFICE OF HOMEOWNER PROTECTION

1. Would create an Office of Homeowner Protection, and state legislative intent that the Office be funded through payments made available to the Attorney General via the Special Deposit Fund (a fund created pursuant to the nationwide mortgage settlement, into which approximately \$370 million is expected to be deposited for use by the Attorney General for purposes specified in the settlement; page B2-3 of the settlement). Would give the Office of Homeowner Protection responsibility for all of the following:
 - a. Responding to inquiries and complaints from individuals about the provisions of the bill.
 - b. Attempting to seek compliance by mortgagees, trustees, beneficiaries, and authorized agents with the provisions of the bill.
 - c. 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.

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- d. Providing an annual report to the Legislature,

summarizing its activities during the prior year.

BORROWER NOTIFICATIONS

2. Would delete the sunset date on the provisions of existing law known colloquially as "SB 1137," and expand the mortgages and deeds of trust to which that law applies by deleting the limitation restricting SB 1137 to mortgages and deeds of trust recorded from January 1, 2003 through December 31, 2007. Would also require two additional items of information to be provided by mortgagees, trustees, beneficiaries, or authorized agents when they initiate contact with borrowers in the manner required by SB 1137:
 - a) the phone number for the Office of Homeowner Protection, and
 - b) if applicable, the deadline by which a borrower must submit an initial application for a loan modification.

3. Would require several additional items of information to be included in the declaration that must be included with notices of default recorded on owner-occupied, single family residential real property pursuant to SB 1137. In addition to the items already required to be included in the declaration, the declaration would have to include statements that:
 - a. The borrower is not a servicemember or the dependent of a servicemember who is entitled to the benefits of the Servicemembers Civil Relief Act (This requirement is based on provisions of the settlement, which require servicers to determine whether borrowers may be eligible for the protections of the Servicemembers Civil Relief Act and for additional servicemember protections available pursuant to the terms of the settlement; page A-32).

 - b. 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. (The settlement requires servicers to ensure that they have reviewed competent and reliable evidence to substantiate the borrower's default and right to

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foreclose [page A-1]; it also requires servicers to implement processes to ensure that the servicer or the foreclosing entity has a documented enforceable interest in the promissory note and mortgage or deed of trust under applicable state law [page A-8]).

If proof of the foreclosing entity's right to foreclose cannot be located, the mortgagee, trustee, beneficiary, or authorized agent must include a separate declaration signed either by an individual with personal knowledge of the facts in the declaration, 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, and which states all of the following:

- i. Facts sufficient to show that the mortgagee, trustee, beneficiary, or authorized agent has the right to enforce the note.
- ii. A statement that the person cannot reasonably obtain possession of the note, and a description of the reasonable efforts made to obtain the note.
- iii. A description of the terms of the note and any of its riders, including all of the following about the note, at a minimum: the date of execution, the parties, the principal amount, the amortization period, the initial interest rate and, if applicable, the initial date and 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; and the expiration of any interest only period, as applicable.

(The settlement defers to state law regarding lost notes, but differs from this bill in that the settlement refers only to notes lost while in the servicer's control. It states that if the original note is lost or otherwise unavailable, servicers must comply with applicable law in an attempt to establish ownership of the note and the right to enforcement. In the event that servicers prepare or cause to be prepared a lost note or lost assignment affidavit with respect to an original note or assignment lost while in the

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servicer's control, the servicer must use good faith efforts to obtain or locate the note or assignment in accordance with its procedures; page A-8. This bill appears to cover situations in which notes are lost prior to the servicer taking control, in addition to situations under the servicer's control).

4. Would prohibit a notice of default from being recorded, unless the mortgagee, beneficiary, or authorized agent sends a separate written notice to the borrower, which includes all of the following, at least 14 days prior to recording the notice of default:
 - a. A statement setting forth facts supporting the right of the mortgagee, beneficiary, or authorized agent to foreclose on the borrower's loan note. (This language is based on the settlement, which requires servicers to set forth the information establishing the foreclosing party's right to foreclose, at least 14 days prior to referring a loan to foreclosure; pages A-4 and A-8).
 - b. 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 (This language is based on the settlement; pages A-4 and A-6).

- c. An itemized plain language account summary setting forth specified information about the terms of the loan and the date on which the last full payment was made; providing contact information for use by the borrower to obtain information about the mortgage; a statement that if the borrower is a servicemember or a servicemember's dependent, he or she may be entitled to certain additional protections; a summary of the loss mitigation efforts that have 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 option; and the

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phone number for the Office of Homeowner Protection.
(This language is based on the settlement, pages A-4, A-7 and A-21).

5. Would require a mortgagee, trustee, beneficiary, or authorized agent to send a written communication to the borrower within five calendar days after recording a notice of default, in which the borrower is informed that he or she may still be evaluated for alternatives to foreclosure, and is provided with information regarding the way in which that borrower would go about applying for such an alternative.
(This language is based on the settlement; page A-24).

DUAL TRACK

6. Would establish the following rules for borrowers who submit an application for a loan modification within 120 days after becoming delinquent, and before a notice of default has been recorded:
 - a. A mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default while the loan modification application is pending, and until either:
 - i) it makes a determination that the borrower is ineligible for a loan modification, or ii) if a borrower does not accept an offered trial or permanent loan modification or other foreclosure prevention alternative, the earlier of the date on which the borrower declines or the borrower's deadline for accepting the offer, as specified.
 - b. If a borrower accepts an offered trial or permanent

loan modification, the mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default until the borrower fails to timely submit the first payment or otherwise breaches the terms of the offer.

- c. If the loan modification requested by a borrower is denied, the mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default until the later of: i) 30 days after the borrower is notified in writing of the denial; or ii) if the borrower appeals the denial, the later of 15 days after denial of the appeal or 14 days after a post-appeal offer is declined by the borrower, or iii) if the appeal leads to the offer of a trial or permanent loan modification, until the

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borrower timely fails to submit the first payment or otherwise breaches the terms of the offer.

(These timelines are based on the settlement [page A-17], but the settlement applies these timelines to complete loan modification applications, while the bill applies the timelines to any loan modification application submitted by a borrower, whether or not it has been deemed complete by the servicer).

7. Would establish the following rules for borrowers who submit an application for a loan modification within 60 days following the recordation of a notice of default, and before the recordation of a notice of sale:
 - a. A mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale, until either: i) it makes a determination that the borrower is ineligible for a loan modification, or ii) if a borrower does not accept an offered trial or permanent loan modification or other foreclosure prevention alternative, the earlier of the date on which the borrower declines or the borrower's deadline for accepting the offer, as specified.
 - b. If a borrower accepts an offered trial or permanent loan modification, the mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale until the borrower fails to timely submit the first payment or otherwise breaches the terms of the offer.
 - c. If the loan modification requested by a borrower is denied, the mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale until the later of: i) 30 days after the borrower is notified in writing of the denial; or ii) if the borrower appeals the denial, the later of 15 days after denial of the appeal or 14 days after a post-appeal offer is declined by the borrower, or iii) if the appeal leads to the offer of a trial or permanent loan modification, until the borrower timely fails to submit the first payment or otherwise breaches the terms of the offer.

(These timelines are based on the settlement [page A-18], but, as described above, the settlement applies these timelines to complete loan modification applications, while the bill applies the timelines to any loan modification

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application submitted by a borrower, whether or not it has been deemed complete by the servicer).

8. Would establish the following rules for borrowers who submit an application for a loan modification less than fifteen days before a notice of sale may be recorded:
 - a. A mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale, until either: i) it makes a determination that the borrower is ineligible for a loan modification, or ii) it 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, the mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale until the borrower fails to timely submit the first payment or otherwise breaches the terms of the offer.

(These timelines are based on the settlement; pages A-19 and A-20. However, the settlement language on this topic states that if a servicer receives a complete loan modification application less than 15 days before a scheduled foreclosure sale, the servicer must notify the borrower before the sale date regarding its determination [if its review was completed] or its inability to complete its review).

9. Would provide that, if a borrower utilizes the process described in Number 6 above, he or she may not reapply for relief using the process described in Numbers 7 or 8 above, unless the borrower's application reflects a material change in the borrower's financial circumstances since the date of the borrower's previous application. Similarly, if a borrower utilizes the process described in Number 7 above, he or she may not reapply for relief using the process described in Number 8 above, unless the borrower's application reflects a material change in the borrower's financial circumstances since the date of the borrower's previous application.

(This language differs from the language of the settlement; page A-29. The settlement expressly states that its provisions in this area are intended "to minimize the risk

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of borrowers submitting multiple loss mitigation requests for the purpose of delay." The bill contains no such language.

Additionally, the settlement's language relieves servicers of obligations to evaluate requests for loss mitigation options from: a) borrowers who were already evaluated or afforded a fair opportunity to be evaluated consistent with the requirements of the Making Home Affordable Modification program or proprietary modification programs prior to the implementation date of the settlement, and b) borrowers who were evaluated after the implementation date of the settlement, consistent with the settlement, unless there was a material change in the borrower's financial circumstances that is documented by the borrower and submitted to the servicer. This bill contains language similar to "b" but does not contain language similar to "a." Thus, unlike the settlement, this bill appears to require servicers to re-evaluate borrowers who were previously evaluated pursuant to HAMP or a proprietary loan modification program, prior to the bill's implementation date).

10. Would prohibit a mortgagee, trustee, beneficiary, or authorized agent from recording a notice of sale under any of the following circumstances:
 - a. The borrower is in compliance with the terms of a trial or permanent loan modification, forbearance, or repayment plan (This language comes directly from the settlement; page A-20).
 - b. 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 (This language comes directly from the settlement; page A-20).
11. Would require a mortgagee, trustee, beneficiary, or authorized agent to record a rescission of a notice of default, when a borrower executes a permanent loan modification. (This language is not in the settlement).

DOCUMENTATION AND RECORDKEEPING REQUIREMENTS

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12. Would establish timelines that must be followed by mortgagees, trustees, beneficiaries, and authorized agents with respect to acknowledging the receipt of written information, providing information about application deadlines, providing deadlines for submitting missing documentation, identifying expiration dates for submitted documents, documenting nonapproval of a loan modification

application, and processing appeals from borrowers resulting from nonapproval of loan modification applications, as specified. (This language closely tracks the language of the settlement; pages A-25 through A-28, except that the settlement applies these requirements to first-lien modifications only, while this bill is not similarly limited in its application).

13. Would require the mortgagee, trustee, beneficiary, or authorized agent to provide the borrower with a copy of the fully executed loan modification agreement, when a borrower accepts an offered loan modification in writing. Would require the mortgagee, trustee, beneficiary, or authorized agent to provide the borrower with a written summary of the terms of a proffered loan modification, if the modification was not made in writing. (This language is based on the terms of the settlement; pages A-28 and A-29. The settlement requires these documents to be provided within 45 days. The bill requires them to be provided as soon as possible).
14. Would prohibit a mortgagee, trustee, beneficiary, or authorized agent from charging any application, processing, or other fee for a proprietary loan modification (based on language in the settlement; page A-29), and from collecting 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 (similar to language in the settlement, but the settlement does not expressly prohibit the imposition of late fees while a denial is being appealed; page A-36).
15. Would require a mortgagee, trustee, beneficiary, or authorized agent to make information about its qualification processes, all required documentation and information necessary for a complete loan modification application, and key eligibility factors for all proprietary loan modifications publicly available (based on the terms of the

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settlement that apply to first- and second-lien proprietary loan modifications; pages A-29 and A-30. The bill does not limit this provision to proprietary loan modifications, as does the settlement).

16. Would require a mortgagee, trustee, beneficiary, and authorized agent to track outcomes and maintain records regarding characteristics, as specified, and performance of proprietary loan modifications, and to provide a description of modification waterfalls, eligibility criteria, and modification terms on a publicly available Internet Web site (based on language in the settlement, which covers information that must be provided about first-lien proprietary loan modifications; page A-30. The bill does not limit this requirement to proprietary first-lien modifications).

TRUSTEE SALE POSTPONEMENTS

17. Would require homeowners to be informed in writing, as specified, whenever the trustee sale date set for the sale of their property is postponed by ten calendar days or more. (This is not based on the settlement).

REMEDIES (not based on the settlement)

18. Would authorize a borrower, who reasonably believes that a mortgagee, trustee, beneficiary, or authorized agent has failed to comply with the requirements of the bill, to seek an order to enjoin any pending trustee's sale in any court having jurisdiction, if a notice of sale has been recorded. Would entitle borrowers who obtain injunctions to reasonable attorneys' fees and costs, and would provide that any injunction must remain in place until the mortgagee, trustee, beneficiary, or authorized agent has complied with the provisions of the bill. Would not allow a borrower to obtain relief for any violation that is technical or de minimis in nature, such that it did not impact the borrower's ability to pursue an alternative to foreclosure.
19. Following a trustee's sale, would authorize a borrower, who reasonably believes that a mortgagee, trustee, beneficiary, or authorized agent has failed to comply with the requirements of the bill, to seek to recover the greater of actual damages or \$10,000, plus reasonable attorneys' fees and costs, in any court of competent jurisdiction. Would

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authorize a court to award a borrower the greater of treble actual damages or statutory damages of \$50,000, plus attorneys' fees and costs, if it finds that a violation of the bill was intentional, reckless, or resulted from willful misconduct by a mortgagee, trustee, beneficiary, or authorized agent. Would not allow a borrower to obtain relief for any violation that is technical or de minimis in nature, such that it did not impact the borrower's ability to pursue an alternative to foreclosure.

20. Would provide that a violation of the provisions of the bill shall not affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice (i.e., that arms' length sales of foreclosed properties to third party purchasers will not be deemed invalid as a result of any violation of the bill, and that the interests of parties who hold liens secured by those properties, following the sales of those properties to bona fide third party purchasers, will not be invalidated).
21. Would provide an affirmative defense to liability for violations of the bill to signatories to the settlement agreement, which are in compliance with that agreement, as specified.

1. Prescribes rules that govern the nonjudicial foreclosure process in California (Civil Code Section 2924 et seq.). A layman's description of the portions of the process that are relevant to this bill follows immediately below. Modifications that were made to this process by SB 1137 (Chapter 69, Statutes of 2008) are described in Number 2, immediately below. SB 1137 will sunset on January 1, 2013, unless its provisions are extended.

a. The nonjudicial foreclosure process begins with the recordation of a notice of default by a mortgagee, trustee, beneficiary, or authorized agent. The notice of default must be recorded in the county in which the property securing the defaulted loan is located, and must be mailed to specified persons with a financial interest in the property, including the property owner. Existing law does not prescribe the minimum amount of time that must pass between a delinquency and the recordation of a notice of default, although notices

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of default are commonly recorded only after a borrower is at least 90 days delinquent on his or her mortgage loan.

b. At least three months must pass after recordation of a notice of default, before the mortgagee, trustee, beneficiary, or authorized agent may record a notice of sale.

Notices of sale must be recorded in the county in which the property securing the defaulted loan is located, mailed to the property owner and other specified persons with a financial interest in the property, published in a newspaper of general circulation, and posted on the property that is the subject of the sale.

c. At least 20 days must pass after recordation of a notice of sale, before a property may be sold. However, sale dates may be, and often are, postponed. Under existing law, a sale date may be postponed for any of the following reasons: 1) upon the order of any court of competent jurisdiction; 2) if stayed by operation of law; 3) by mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee (i.e., by mutual agreement between a borrower and his or her lender); and/or 4) at the discretion of the trustee. A new notice of sale must be recorded, if a postponement or postponements delay the sale for more than 365 days following the first scheduled sale date.

d. Effective April 1, 2012, each notice of trustee sale must include the following language, pursuant to SB 4 (Calderon and Vargas, Chapter 229, Statutes of 2011): "NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your

sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call telephone number] for information regarding the trustee's sale or visit this Internet Web site address] for information regarding the sale of this property, using the file number assigned to this case case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information

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or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale."

The wording of the notice immediately above was facilitated by other provisions of SB 4, which require that trustees make postponement information available via an Internet Web site, telephone recording that is accessible 24 hours a day, seven days a week, or via any other means that allows 24/7 no-cost access to updated information about postponements.

2. Pursuant to SB 1137 (Chapter 69, Statutes of 2008), the following is required, before a notice of default may be recorded on a mortgage or deed of trust, which was recorded between January 1, 2003 and December 31, 2007, and was secured by single-family, owner-occupied residential real property:
 - a. A mortgagee, beneficiary, or authorized agent (i.e., the mortgage lender or its representative) must 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. Contact (or attempted contact, if a borrower is unreachable) must be made telephonically and in writing, as specified. During the initial contact, the mortgagee, beneficiary, or authorized agent must advise the borrower that he or she has the right to request a subsequent meeting, which, if requested, must occur within 14 days of request. The mortgagee, beneficiary, or authorized agent must also provide the borrower with a toll-free telephone number that can be used by the borrower to contact a U.S. Department of Housing and Urban Development-certified housing counseling agency.
 - b. A mortgagee, beneficiary, or authorized agent must wait at least 30 days after making initial contact with a borrower, or satisfying specified due diligence requirements to make contact, before it can record a notice of default on a loan covered by SB 1137.
 - c. Each notice of default that is recorded on a loan covered by SB 1137 must include a declaration stating that the mortgagee, beneficiary, or authorized agent contacted the borrower, tried with due diligence to contact the borrower, or that no contact was required, because one of the exemptions applied. Exemptions from SB 1137's contact requirements are provided, in cases where a borrower has already surrendered the property, contracted with an

organization or other entity that advises borrowers on how to "game" the foreclosure process, or filed for a bankruptcy that is still before a court.

COMMENTS

1. Purpose: The author states, "California is the midst of a major crisis in homeownership. It is estimated that 500,000 more homes will be subject to foreclosure in the next year to eighteen months. According to the Attorney General, there are wide-spread problems in the mortgage servicing industry involving distressed homeowners pursuing loan modification discussions with a bank while at the same time the bank is pursuing foreclosure on a separate track. This is known as "dual tracking." As a result, discussions that in many cases will lead to a successful loan modification are cut off by a foreclosure sale. In some instances, borrowers have even made modified loan payments for a period of months, as agreed upon with the bank, when the foreclosure sale occurs.

Under the recently-concluded National Mortgage Settlement, the five largest banks have entered into consent judgment under which dual tracking will be stopped. All Californians are entitled to expect the same fair treatment.

The bill also contemplates the establishment of an Office of Homeowner Protection that would act as an ombudsperson to facilitate the resolution of borrower-servicer disputes and reduce the need for litigation. This would be funded with proceeds from the National Mortgage Settlement."

2. Background and Discussion: On March 12, 2012, the United States Department of Justice, U.S. Department of Housing and Urban Development, and 49 state Attorneys General, including California's Attorney General Kamala Harris, announced the filing of a settlement agreement with the nation's five largest mortgage servicers (Ally/GMAC, Bank of America, Citi, JPMorgan Chase, and Wells Fargo). As part of the settlement, six documents were filed with the court: a complaint, which details the bad acts alleged by the plaintiffs to have been committed by the servicers, and five separate consent judgments (one for each of the servicers), in which the terms of the agreement between each servicer and the plaintiffs is detailed. All of these documents can be downloaded from www.nationalmortgagesettlement.com.

Although the terms of each of the five consent judgments are

slightly different, each of the judgments shares many similarities. Three elements of the judgments which are identical, and which are relevant for purposes of this analysis, include the settlement term sheet (referenced in each of the settlements as Exhibit A), the enforcement provisions (Exhibits E and E-1), and the releases from prosecution that were granted to the servicers (Exhibits F and G). Other key elements of the judgments, which will not be discussed further in this analysis, include discussions of how much money each of the servicers must pay in connection with the settlement, how that money is allocated among states, how credit toward servicers' monetary obligations is calculated under the settlement (different types of consumer relief count differently toward servicers' monetary obligations), and how servicemembers and their dependents are covered by the settlement.

The settlement term sheet formed the basis for many of the provisions of this bill and its companion, SB 1471, and is widely expected to form the basis for national servicing standards that the federal Consumer Financial Protection Bureau is expected to propose sometime this summer.

3. How will the settlement be enforced/How does the settlement handle private rights of action? Responsibility for enforcing the terms of the settlement agreement rests with a federal enforcement monitor (Joseph Smith, former banking commissioner of North Carolina) and a Monitoring Committee, which consists of state attorneys general, state financial regulators, the U.S. Department of Justice, and the U.S. Department of Housing and Urban Development. This Monitoring Committee or any party to the consent judgments are the only entities that may bring actions to enforce the judgments. All actions must be brought in the U.S. District Court for the District of Columbia. Actions may only be brought if the time to cure a potential violation (see discussion below) has expired.

When people assert that the settlement preserves private rights of action, they are not referring to private rights to enforce the provisions of the settlement. Instead, they are referring to the fact that the state and federal releases in the settlement preserve individuals' ability to file suit for violations of residential mortgage loan origination and

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servicing laws, and for violations of residential foreclosure practices. The releases from prosecution contained in the settlement prohibit any of the 49 state attorneys general, any other state government entities in any of the 49 states signing the agreement, or the federal government from prosecuting civil claims related to the residential mortgage loan servicing, residential mortgage loan origination practices, and residential foreclosure practices of the signatories prior to the date of the settlement. Because these releases did not cover individual claims, individuals may continue to sue the signatories for violating state or federal law governing residential

mortgage loan servicing, residential mortgage loan origination practices, or residential foreclosure practices.

It is these private rights of action that the settlement preserved, not private rights of action to enforce the terms of the settlement.

If individuals can't enforce the provisions of the settlement agreement, how will it be enforced? As noted immediately above, the terms of the settlement are enforced by the federal enforcement monitor and the Monitoring Committee. Attorney General Harris has also appointed Irvine Law School Professor Katherine Porter to assist her in monitoring servicers' commitments to California.

Under the terms of the settlement, only two types of relief may be granted by the court (page E-15):

- a. Non-monetary equitable relief, which may include injunctive relief, direct certain specific actions be taken under the terms of the consent judgment, or comprise other non-monetary corrective action; and
- b. Civil penalties of not more than \$1 million per uncured violation (\$5 million in the event of a second uncured violation, when the first uncured violation involves widespread noncompliance). Civil penalties are distributed either to the United States, the state that prosecuted the violation, or to all states in proportion to their payouts under the terms of the settlement, depending on the nature of the violation.

Identifying Potential Violations: Each servicer is

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required to establish an internal quality control (QC) group that is independent from the line of business whose performance is being measured under the terms of the consent judgment. The settlement contains a series of metrics, each of which must be measured by these internal QC groups and reported upon quarterly to the monitor (page E-3).

These metrics cover all stages of the loss mitigation and foreclosure process, from initial contact through loan modification review, decision, and appeal, through foreclosure sale, as well as other topics of the consent judgment outside of the foreclosure process, such as the calculation of fees and imposition of force-placed insurance. Generally speaking, the metrics are designed to numerically evaluate servicers' performance across all aspects of the consent judgment. Small error rates require remediation, but do not trigger official violations. Error rates in excess of the threshold error rates identified in the consent judgment trigger official violations (what the settlement defines as potential violations; Exhibit E-1).

Servicer Right to Cure: Whenever a potential violation occurs (i.e., whenever a servicer exceeds the threshold error rate for a given metric in a given quarter), the servicer must meet and confer with the Monitoring Committee within 15 days of the submission of a report showing the violation. Servicers have a right to cure any potential violation. Potential violations are deemed cured if: a) a corrective action plan approved by the monitor is determined by the monitor to have been successfully completed, b) a quarterly report covering the cure period shows that the threshold error rate has not been exceeded for that same metric during that period, and c) the monitor confirms the accuracy of that quarterly report (pages E-11 and E-12).

In addition to a servicer's obligation to cure a potential violation via a corrective action plan, servicers must remediate any material harm to particular borrowers identified through work performed by the servicer. Furthermore, if a servicer has a potential violation so far in excess of the threshold error rate that the monitor concludes the error is widespread, the servicer must identify other borrowers who may have been harmed by such noncompliance and remediate all such harms (page E-12).

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4. Summary of Arguments in Support:

- a. Attorney General Kamala Harris is sponsoring SB 1470, and sees the bill as an important part of her Homeowner Bill of Rights legislative package. The Attorney General took the first step in addressing the mortgage crisis by signing the National Mortgage Settlement, which includes mortgage servicing standards that are designed to return integrity to the foreclosure process. The next step is reforming California's laws to ensure that these protections are made permanent, and apply to other banks and servicers to re-establish integrity and uniformity to the state's foreclosure process. SB 1470 will accomplish these goals. The bill will resolve the problem of dual-tracking and will require servicers to provide documentation demonstrating their right to foreclose, before the foreclosure process may begin. The bill provides a private right of action that will allow for meaningful enforcement when the bill's provisions have been violated in a way that prejudices the ability of homeowners to secure a loan modification. These provisions will help ensure home ownership for thousands of Californians who are able to make payments under modified loan terms over the long term, if given a chance.
- b. The Center for Responsible Lending (CRL) observes that an average of more than 500 California families have lost their home every day since the fourth quarter of 2007, and that, although foreclosure activity has retreated from peak levels, delinquencies and

foreclosures far exceed pre-crisis housing market levels. Research by CRL suggests that California is barely halfway through the foreclosure crisis. Among Californians who received mortgage loans between 2004 and 2008, 9.3% have already lost their homes to foreclosure, and another 8.9% are in default and at immediate, serious risk of losing their homes.

Systemic servicing and foreclosure process problems continue to lead to unnecessary foreclosures. Too many California families are unnecessarily losing their homes when they could have qualified for a mortgage modification that would have saved their home, improved returns for the owner of the mortgage, and avoided costs

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on neighbors, local governments, and California's economy as a whole. SB 1470 would put into place measures to promote transparency and fairness in the foreclosure and loan modification process.

Consumers' Union echoes the support expressed by CRL and adds that SB 1470 will create a much-needed help struggling California homeowners avoid foreclosure, if they qualify for a cost-effective loan modification. Preventing unnecessary foreclosures at the earliest stage possible is in everyone's best interest. The protections in SB 1470 are seriously needed.

The California Public Interest Research Group adds, "It is clear that the current system - proceeding with foreclosure concurrent to any foreclosure-avoidance discussions - is not working. No one benefits - not the servicer, not the investors, not the homeowners, not the community, and not the California economy, when a home that is in the process of being saved through a loan modification, is sold in foreclosure."

c. Numerous other consumer advocacy organizations, religious organizations, and unions expressed support for reasons similar to those summarized above.

d. The California Reinvestment Coalition and 57 of its member organizations wish to be reflected as in support of the bill, only if it is amended to strengthen its private rights of action, and clearly apply the private rights of action in the bill to settlement signatories. These groups are not listed in the support section at the bottom of this analysis, because they are technically not in support at this time; they will only support of the bill, if amendments are made, which are not currently in the bill before this Committee.

5. Summary of Arguments in Opposition:

a. A coalition of trade associations representing the financial services industry and the secondary mortgage market raised several concerns in their letter of

opposition. The coalition is concerned about legislation that will result in a de-facto moratorium on foreclosures, as such a moratorium will result in a further erosion of property taxes for local governments,

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perpetuate community blight for longer periods, act as a disincentive for capital investments, and forestall economic recovery. As collateral recovery becomes less certain, investors in mortgage products will be less inclined to employ their investment capital in mortgage assets. This will have the effect of reducing the availability of credit, as lenders restrict their originations to higher credit quality borrowers, where foreclosure is deemed less likely, and investors demand higher returns on their investments, to compensate for increased risk.

A few of the specific concerns cited in the coalition's letter are summarized below.

i. SB 1470 exemplifies an overly complicated formula, which will further frustrate and prolong existing foreclosure and loss mitigation efforts. The bill will add to the complexity of navigating the nonjudicial foreclosure process by servicers, creating a series of procedural traps that will lead to ever increasing litigation.

ii. A temporary situation does not require a permanent solution. SB 1470 proposes permanent changes to law that are extraordinarily restrictive and draconian. The nationwide mortgage settlement has a sunset date, and SB 1470 should, as well.

iii. SB 1470 fails to narrowly target at-risk borrowers, and applies too broadly. It promotes strategic defaults, allows investors and speculators to crowd out borrowers with financial hardship, and fails to require tender by borrowers as a symbol of good faith. For borrowers who strategically default and have no intention of remaining in their homes, the bill will be used as a delay and a leveraging tactic.

iv. SB 1470 will invite litigation through the inclusion of private rights of action. Exposing entities and individuals to excessive litigation risk will not attract and encourage creditors and investors to inject the capital necessary to revive California's residential housing marketplace.

a. The California Land Title Association (CLTA) acknowledges that the inclusion of language intended to protect bona fide purchasers and bona fide encumbrancers will provide them with an affirmative defense against claims asserting the invalidity of title transfer. CLTA notes, however, that this defense must be asserted by a new homebuyer/BFP after he or she is sued, and will do nothing to dissuade delinquent borrowers and their attorneys from naming BFPs in litigation that is likely to flow from the enactment of SB 1470. These new homebuyers will be saddled with legal costs in the thousands of dollars, simply to hire attorneys to file motions to dismiss based on the BFP protections in the bill. Homebuyers fortunate enough to have purchased a homeowner's title policy following a foreclosure sale will be able to have their title insurer defend them, but they will have to pay a significant premium to obtain their new title policies for that reason.

CLTA observes that SB 1470 will have a negative impact on California's real estate economy and the secondary market. Currently, lender's title policies (i.e., policies to protect the lender's security interest in a home) attach to a borrower's loan and follow that loan, if it is sold into the secondary market. SB 1470 will introduce several new risks to title and will likely cause the title industry to reevaluate what coverage it will be able to offer to lenders. The likelihood that lenders will be unable to obtain title policies that limit their potential for risk and loss will translate to diminished secondary market interest in the loans these lenders make. Secondary market buyers seeking to assemble securitized pools of loans will look less favorably on loans that carry a potential for risk and loss due to title challenges.

b. The California Association of Realtors (CAR) is concerned that SB 1470 will reduce the availability of mortgage credit and increase the cost of funds for legitimate, qualified borrowers attempting to participate in the emerging recovery of the California real estate market. CAR believes that it is premature to lock into California statute some version of the settlement before it has been proven in the market. To the extent the settlement is to be incorporated into California law, CAR suggests it be done so in a way that creates more

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uniformity for all lenders and servicers rather than less, and recommends that the bill track the settlement, except as needed to modify terms to be consistent with California's statutory usage.

c. The California Chamber of Commerce labels SB 1470 a job-killer bill, because it will impede California's

housing market recovery by allowing all borrowers, including strategic defaulters and investors, to interrupt the foreclosure process to forestall legitimate foreclosures. SB 1470 will continue a trend of delaying or stretching out the foreclosure process. The measure fails to narrowly target at-risk borrowers, and applies broadly, allowing a borrower to apply for a loan modification multiple times during the foreclosure process, with each application adding a month or more to the process.

The enforcement provisions of SB 1470 will incent litigation by imposing strict liability with no right to cure, and inflicting statutory, actual, treble, and punitive damages. The measure will likely limit future access to credit, discourage investment capital for the purposes of residential mortgage lending, or impose a significant risk-based premium, resulting in higher costs for consumers. Forestalling the foreclosure process will further frustrate local governments struggling with properties in disrepair during the foreclosure process, continue in the trend of reduced property tax revenue for local governments, and artificially sustain depressed property values.

 d. The Civil Justice Association of California believes that SB 1470 will force nonjudicial foreclosures into court. The bill creates expansive, new obligations that are enforceable with lucrative penalties, statutory damages, and attorney's fees. The bill's requirements and prohibitions are outside of the carefully negotiated national mortgage settlement. California's foreclosure process is already highly regulated. There is no need to insert lawyers and lawsuits into the process.

6. Amendments:

a. This bill requires both clarification and correction, to provide more clarity regarding the types

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of mortgages and deeds of trust to which its requirements apply. Section 1 of this bill applies to mortgages and deeds of trust secured by owner-occupied, residential real property. Sections 2 through 9 of this bill apply to mortgages and deeds of trust secured by single family, residential real property (i.e., they lack the owner-occupancy requirement).

The bill also contains language (likely inadvertent) which limits Civil Code Section 2924 and 2924f (both of which are sections of general applicability to all types of nonjudicial foreclosures) to foreclosures on single family, residential real property.

The provisions of the mortgage settlement that relate to mortgage servicing apply to loans secured by owner-occupied properties that serve as the principal

residence of the borrower.

To improve the clarity of the bill, and to ensure that it does not unintentionally narrow certain sections of the Civil Code which broadly apply to nonjudicial foreclosures on all types of property, staff suggests the following amendments. These amendments are drafted in a manner intended to conform the bill to the owner-occupied, residential real property scope of SB 1137 and the settlement. If the authors and sponsor wish to select a different scope, they need only substitute different language for the following:

Delete the language on page 19, lines 16 through 21, and insert the following language on page 10, between lines 36 and 37; page 13, between lines 32 and 33; page 14, between lines 34 and 35; page 15, between lines 22 and 23; page 17, between lines 2 and 3; and page 18, between lines 7 and 8: "This section shall apply only to mortgages and deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. For purposes of this section, "owner-occupied" means that the residence is the principal residence of the borrower as indicated to the lender in loan documents."

- b. Language creating and referring to the Office of Homeowner Protection would also benefit from clarification and amendment.

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- i. Some have questioned whether the Office will have regulatory or enforcement authority. Although the bill is silent on both of these topics, it is staff's understanding that neither regulatory nor enforcement authority were contemplated by the authors or sponsor. Instead, the Office was envisioned as an ombudsman's office and an information clearinghouse.

If the authors and sponsor wish to clarify these points, staff suggests adding a new subdivision (b) on page 19, between lines 36 and 37, as follows:
"(b) The Office shall not have the authority to promulgate regulations or bring enforcement actions."

- ii. In several places, the bill contains language that requires mortgagees, trustees, beneficiaries, and authorized agents to provide "the toll-free telephone number made available by the Office of Homeowner Protection." This language is intended to require the provision of a phone number, which can be used by borrowers to reach the Office of Homeowner Protection. The following amendments are necessary to clarify this point, and to require the Office of Homeowner Protection to establish a

toll-free number at which it can be reached.

On Page 7, lines 21 and 22; page 9, lines 1 and 2; Page 13, lines 31 and 32; Page 16, lines 6 and 7; page 16, lines 37 and 38; and in any other place the language appears, strike "The toll-free number made available by the Office of Homeowner Protection" and insert "A toll-free phone number that can be used to reach the Office of Homeowner Protection."

Page 8, lines 18 and 19, strike "the office of Homeowner Protection and" and insert the following on page 8, line 20, after the first comma: "a toll-free phone number that can be used to reach the Office of Homeowner Protection,"

Page 19, between lines 30 and 31, insert a new paragraph (3): "Establishing a toll-free telephone number for use by borrowers to contact the Office."

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iii. As drafted, the section describing the responsibilities of the Office requires it to respond to inquiries and complaints regarding, and attempt to seek compliance with "this article." "This article" is titled "Mortgages in General," and includes rules governing nonjudicial foreclosures on all types of properties. It is staff's understanding that the sponsor and authors want the Office of Homeowner Protection to act as an ombudsman only related to the provisions of this bill, SB 1471 (DeSaulnier and Pavley), and SB 1137. If they wish to narrow the responsibilities of the Office in that manner, staff suggests the following:

Page 19, line 27 and page 19, line 30, strike "article" and insert: "act" and add a conforming amendment to SB 1471, which gives the Office of Homeowner Protection authority to enforce provisions of that act, as well. These conforming amendments can be handled at the same time the double-jointing amendments recommended later in this analysis are made.

iv. To reflect formal approval of the settlement by the United States District Court of Appeal on April 5, 2012:

Page 20, line 2, strike the blank and insert: April 5, 2012.

v. A technical amendment is required on page 19, line 29. Strike "or" and insert: and

c. This bill contains three different provisions that appear to address the same topic, but do so in different

ways, and are confusing as drafted. Clarifying their meaning will be critical, if California wishes to ensure that implementation of these provisions will be able to occur, without significant court involvement.

- i. As proposed to be amended Section 2923.5(b)(3) (page 4, lines 27 through 34) prohibits a notice of default from being recorded, without the inclusion of a declaration in which the mortgagee,

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beneficiary, or authorized agent must declare that it "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."

The bill further requires that this evidence either be attached to or described in the declaration.

It is unclear whether the word "any" in this requirement is intended to mean "all." Representatives of the sponsor have indicated that if any assignments exist, their intent is that all assignments be documented (and either attached to declaration accompanying the notice of default or described in that declaration). At a minimum, the wording of this section should be clarified so that the sponsor's intent is clear. However, staff notes that a related provision proposed by this bill's sponsor in SB 1471, which required every assignment of a mortgage or deed of trust to be recorded, was deleted by the April 10th, 2012 amendments to SB 1471, because it was deemed to be problematic on a number of different levels. If a virtually identical requirement was deleted from SB 1471 because of its problematic nature, the authors and sponsor may wish to delete it from SB 1470, as well (page 4, lines 27 through 34).

- ii. Regardless of whether this language is deleted or merely clarified, an amendment will be required on page 4, line 35. That line refers to "proof," while the lines above relate to "evidence."
Page 4, line 35: strike "proof" and insert:
evidence.

- iii. A few lines later, the bill provides direction to mortgagees, beneficiaries, or authorized agents who are unable to comply with the provisions on page 4, lines 27 through 34. In lieu of recording a declaration in which one of these entities states that it "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," the entity may include a separate declaration that includes "facts sufficient to show

that the mortgagee, trustee, beneficiary, or authorized agent has the right to enforce the note." (page 5, lines 3 and 4). It is unclear what documents or information would represent "facts sufficient to show that a party has the right to enforce the note," if that party lacks documentation of all assignments and endorsements. Failure to clarify this language in statute is likely to lead to significant litigation over its meaning.

iv. Once this language is clarified, a nearby, related section may be unnecessary. If an entity is able to provide facts sufficient to show that it has the right to enforce the note, why would that entity also have to record a lengthy description of the terms of that note (Section 2923.5(b)(3)(C); page 5, lines 8 through 18)? Is the language on page 5, lines 8 through 18 necessary?

d. Language in this bill intended to prevent borrowers from submitting multiple loan modification applications for the purpose of delay differs significantly from the settlement language on this topic. As previously discussed, the settlement expressly states that its provisions in this area are intended to minimize the risk of borrowers submitting multiple loss mitigation requests for the purpose of delay. This bill lacks such language.

More significantly, the settlement contains language intended to ensure that if a borrower was evaluated for a loss mitigation option by a signatory prior to the date of the settlement agreement, that borrower need not be re-evaluated by the signatory pursuant to the settlement agreement, absent a material change in the borrower's financial circumstances. This bill is drafted in such a way that borrowers, who were evaluated for loss mitigation options prior to the effective date of the bill, are entitled to be reevaluated for loss mitigation options pursuant to the provisions of the bill, as if they had not previously applied for loss mitigation relief. This bill's limitation on submitting multiple applications only applies, after a borrower has applied for a loan modification or other foreclosure avoidance alternative pursuant to the terms of the bill.

bill to the provisions of the sett
submission of multiple requests for the purpose of delay,
they may wish to consider the following amendments:

Page 10, between lines 36 and 37, insert the following: To minimize the risk of borrowers submitting multiple loss mitigation requests for the purpose of delay, subdivisions (c), (d), and (e) of this section shall not apply, if the mortgagee, beneficiary, or authorized agent has previously determined that the borrower is not eligible for a modification of that loan, unless the borrower's application reflects a material change in the borrower's financial circumstances since the date of the borrower's previous application."

Page 14, line 29 and page 15, line 16, insert the following additional language at the start of the line: "To minimize the risk of borrowers submitting multiple loss mitigation requests for the purpose of delay,"

Page 14, lines 31 and 32, strike "pursuant to Section 2923.6"

Page 15, lines 18 and 19, strike "pursuant to Section 2923.6 or Section 2924.10"

e. The dual track language of this bill differs from the dual track language in the settlement, in that the latter refers to what must happen after a borrower submits a complete loan modification application to a servicer, while the bill speaks to what must happen after any type of loan modification application is submitted, complete or not.

If the authors and sponsor would like to more closely conform these provisions of the bill to the settlement language, the following amendments are suggested:

Page 10, line 1, strike "an" and insert: a complete

Page 13, line 34, strike "an" and insert: a complete

Page 14, line 36, strike "an" and insert: a complete

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f. The dual track language of this bill that addresses the process which must be used to evaluate borrowers who submit loan modification applications very late in the process (less than 15 days before a notice of sale may be recorded; Section 2924.11 of the bill, beginning on page 14, line 35) would benefit from clarification to achieve the authors' and sponsor's intent. As drafted, it states that a mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale, until either: i) it makes a determination that the borrower is ineligible for a loan modification, or ii) it 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.

As the bill is drafted, a beneficiary could record a notice of sale, as long as it tells a borrower that it can conduct an expedited review of the borrower's application. This possible outcome is not desired by the authors or sponsor.

As noted earlier, the settlement language on this topic (page A-20) states that if a servicer receives a complete loan modification application less than 15 days before a scheduled foreclosure sale, the servicer must notify the borrower before the sale date regarding its determination (if its review was completed) or its inability to complete its review.

To further the authors' and sponsor's intent, and to conform the language of Section 2924.11 of the bill more closely to the settlement language, staff suggests the following clarifying amendment:

Page 15, strike lines 7 through 10 and insert: (2) The mortgagee, beneficiary, or authorized agent notifies the borrower regarding its determination, if its review was completed, or, if not, the reason or reasons it could not complete its review of the borrower's application.

g. The provision of this bill which requires borrowers to be informed in writing about trustee sale postponements that are longer than nine days in length requires technical and conforming amendments to achieve the authors' and sponsor's intent. As drafted, the bill

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will change the long-standing rule, which ensures that official announcements of trustee sale postponements occur at the place, date, and time last set for the sale.

It is important to ensure that official postponements continue to be announced at the place, date, and time last set for the sale, to ensure that persons who may wish to bid on the property are informed about the postponements. The following technical amendments are suggested, to achieve the authors' and sponsor's intent. Notwithstanding the suggestions below, it remains an open question before this Committee whether the trustee sale postponement provisions of this bill are necessary, given the changes enacted last year, pursuant to SB 4. As described earlier, that bill added language to the notice of sale, effective April 1, 2012, which gives homeowners an easy way to obtain information about the details of trustee sale postponements, at no cost to them.

i. Page 12, strike lines 12 through 20, and insert: "Whenever a sale date is postponed for a period of at least 10 calendar days pursuant to Section 2924g, a mortgagee, trustee, beneficiary, or

authorized agent shall provide written notice to a borrower regarding the new sale date and time, and if applicable, the new location, within five calendar days following the postponement. Information provided pursuant to this paragraph does not constitute the public declaration required by subdivision (d) of Section 2924g. Failure to comply with this paragraph shall not invalidate any sale that would otherwise be valid under Section 2924f."

ii. Page 21, line 2, after the period, insert: "A change in the location of the sale proceedings, if any, whether due to the requirement of a public entity, emergency, or other circumstances that preclude the use of the published location, shall be announced at the time of postponement."

iii. Page 21, line 18: Strike "for any postponement that does not", strike line 19, and strike "(a) of Section 2924" on line 20.

iv. Page 21, line 22: Strike "shall be the same place as originally fixed by the trustee"

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and strike "for the sale" on line 23, and insert: may be other than the place originally fixed by the trustee or subsequently relocated by the trustee for the sale.

v. Add the following as the third sentence of the "NOTICE TO PROPERTY OWNER required in every notice of sale pursuant to Section 2924f, as follows: "Postponements of ten days or more must be communicated to you in writing." (This change will require that Section 2924f be added to this bill, and amended in the manner described in this paragraph).

h. The word "trustee" appears in multiple places in this bill, where it is inappropriate. In California, trustees perform ministerial tasks related to nonjudicial foreclosures, at the direction of mortgagees and/or beneficiaries; they do not evaluate borrowers for foreclosure prevention alternatives. The word "trustee" should be deleted from all of the following locations: Page 8, lines 22 and 26; page 10, line 8; page 14, line 3; page 15, lines 4, 7, 27, and 31; page 16, lines 16, 27, and 31; page 17, lines 15, 19, 25, 30, and 33; page 18, line 1.

i. The following are relatively technical wording changes, which were discussed with the sponsor prior to the hearing, and to which staff understands the sponsor has agreed. They are intended to further the authors' and sponsor's intent, remove unnecessary language, and clarify unclear terminology:

i. Page 5, strike lines 31 through 36, and insert: (B) The means and process by which a borrower may apply for a loan modification or other foreclosure prevention alternative, and the deadlines for any required submission to be timely processed.

ii. Page 6, strike lines 23 through 30, and insert: (2) Notification that the borrower may receive, upon written request to the mortgagee, beneficiary, or authorized agent, a copy of the borrower's payment history since the borrower was last less than 60 days past due, a

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copy of the borrower's promissory note, copies of any assignments 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 or investment trust that holds the borrower's loan.

iii. Page 18, line 3, after "modification" insert: application

j. During interested party discussions with the authors and sponsor leading up to this committee hearing, several interested parties requested clarification regarding the extent to which this bill creates a right to a loan modification. Representatives of the sponsor indicated the bill was not intended to create such a right, and expressed a willingness to clarify the bill in that manner.

If the authors and sponsor are amenable to including such language, staff suggests that the remedies section of the bill would be a likely place to add it (page 18, beginning at line 9).

aa. The private rights of action authorized by this bill would benefit from clarification (page 18, lines 9 through 34 and 38 through 40, and page 19, lines 1 and 2). As drafted, they allow a borrower to seek an order to enjoin a trustee sale, or an order seeking damages, if the borrower has a reasonable belief that a mortgagee, trustee, beneficiary, or authorized agent failed to comply with specified provisions of the bill. The bill implies, but does not expressly direct the court to find that a violation has occurred, before issuing an injunction or awarding damages. The bill also contains language intended to protect servicers from lawsuits over violations of the bill that were technical or de minimis in nature, and which did not impact a borrower's ability to pursue an alternative to foreclosure, but this language appears in a separate subdivision as the private rights, and is unclear regarding what constitutes an "ability to pursue an alternative to foreclosure."

The following language is suggested, in lieu of the existing language of 2924.14(a) (page 18, lines 9 through 20), to ensure that: i) an injunction or awarding of

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damages only occurs after a court finds that a violation has occurred, and ii) a borrower is only entitled to relief, if that violation resulted in that borrower being denied approval for a foreclosure avoidance alternative for which he or she applied:

"A court of competent jurisdiction may enjoin a pending trustee's sale, if a notice of sale has been recorded, and a borrower presents evidence satisfactory to the court, regarding the existence of a violation of Section 2923.5, 2923.6, 2924, 2924.9, 2024.10, 2924.11, 2924.12, 2924.13, or 2924g by a mortgagee, trustee, beneficiary, or authorized agent, which resulted in the borrower being denied approval for a foreclosure avoidance alternative for which that borrower applied. Any injunction shall remain in place until the mortgagee, trustee, beneficiary, or authorized agent has complied with the requirements of the section or sections that were violated. A borrower who obtains an injunction shall be entitled to reasonable attorneys' fees and costs."

The following is suggested in lieu of the existing language of 2924.14(b) (page 18, lines 21 through 34): "A court of competent jurisdiction may award a borrower the greater of actual damages or ten thousand dollars (\$10,000), plus reasonable attorney's fees and costs, if a trustee's sale has been concluded, and a borrower presents evidence satisfactory to the court regarding the existence of a violation of Section 2923.5, 2923.6, 2924, 2924.9, 2024.10, 2924.11, 2924.12, 2924.13, or 2924g by a mortgagee, trustee, beneficiary, or authorized agent, which resulted in the borrower being denied approval for a foreclosure avoidance alternative for which that borrower applied."

If these amendments are accepted, the text on page 18, lines 38 through 40, and page 19, lines 1 and 2 should be deleted.

bb. This bill is silent on whether it intends to authorize class action lawsuits to enforce its provisions. Staff understands that neither the sponsor nor this bill's authors intend class actions. The following language is suggested as an addition to Section 10 of the bill (Civil Code Section 2924.14) to clarify this intent:

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Page 19, between lines 34 and 35, insert: (c) The provisions of this act shall not be enforceable through a class action lawsuit. No court shall have authority to certify a class of plaintiffs in a class action lawsuit brought to enforce the provisions of this bill.

cc. The provision which provides signatories to the settlement with an affirmative defense to liability for violations of the bill under certain circumstances is unclear as to its intent and its effect (page 19, lines 3 through 10). It also incorrectly refers to the settlement agreement (it only references the agreement reached with Bank of America, and not the agreements reached with the other four signatories). Substitute language is not suggested at this time, because discussions between the signatories and the authors and sponsor on this topic are still preliminary.

Staff observes, however, that while a compromise on this language is currently unclear, the existing disagreement on this issue is quite clear. The signatories favor language that would exempt them from the provisions of the bill that are based on the settlement, during the pendency of the settlement. Their argument is based on the fact that the settlement already contains enforcement mechanisms. The settlement does not authorize individuals to bring suit against the signatories for violations of the settlement, and they do not believe it is appropriate for California law to authorize such suits.

Those who would like to see the signatories subject to private rights of action for violations of this bill believe that signatories and non-signatories alike should be answerable for their compliance (or noncompliance) with this bill. They are concerned that individuals do not have redress against servicers who violate the settlement, and view this bill as a way to provide such redress.

dd. Should this bill have a delayed operative date? A delayed operative date for all of the bill's provisions other than the establishment of the Office of Homeowner Protection would allow servicers time in which to adopt policies and procedures for use in complying with the

provisions of the bill. This time would also be valuable to allow the Office of Homeowner Protection to be established and staffed, and for its staff to be trained, before the Office begins receiving calls from homeowners.

Staff suggests a July 1, 2013 operative date for all of the sections of the bill other than Section 12 (which creates the Office of Homeowner Protection), and a

January 1, 2013 operative date for the provision of the bill creating the Office.

ee. Should this bill have a sunset date? Virtually all of the problems it is trying to address occurred as a result of the foreclosure crisis, a lengthy period of economic stagnation which will eventually end. Will the requirements of this bill still be appropriate, after California's housing market has returned to the position of strength it has traditionally held within California's economy, and once foreclosures occur most frequently on properties that hold more value than is owed to the foreclosing beneficiary?

ff. Both this bill and SB 1471 amend Section 2924 of the Civil Code, but do so in different ways. The sponsor of both this bill and SB 1471 also envision having the Office of Homeowner Protection handle borrower questions and complaints regarding the provisions of both bills. Double-jointing amendments will be necessary, and contingent enactment may be advisable, once the bills are closer to their final forms. _

7. Related Legislation:

- a. AB 1602 (Eng and Feuer), 2011-12 Legislative Session: Identical to this bill. Pending a hearing in the Assembly Banking and Finance Committee.
- b. SB 1471 (DeSaulnier and Pavley) and AB 2425 (Mitchell): Both identical to each other, these bills would prohibit the recordation of robo-signed mortgage documents, as defined, require certain borrowers to be assigned a single point of contact by their servicers for loss mitigation-related communication, and would make related changes. SB 1471 is pending a hearing in this Committee. AB 2425 is pending a hearing in the Assembly Banking and Finance Committee.

LIST OF REGISTERED SUPPORT/OPPOSITION

Support

Attorney General Kamala Harris (sponsor)
AFSCME
California Church Impact
California Labor Federation
California Nurses Association
California Professional Firefighters
California Public Interest Research Group
Cambridge Credit Counseling Corporation
Center for Responsible Lending
ClearPoint Financial Solutions, Inc.
Consumers Union
East Los Angeles Community Corporation
Green Path

Greenlining Institute
HomeStrong USA
International Federatio of Professional & Technical Engineers
Local 21
Lutheran Office of Public Policy -- California
National Asian American Coalition
National Council of La Raza - California
Nova Debt
PICO-California
SEIU
SEIU Local 1000
State Building and Construction Trades

Opposition

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

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Consultant: Eileen Newhall (916) 651-4102

AMENDED IN SENATE APRIL 10, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1471

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

February 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

~~(6)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 ~~(g)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ~~2924.9.~~

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

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

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

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

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

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

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

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

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

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

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

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

25 ~~SEC. 6.~~

26 ~~SEC. 7. Section 2932.5 of the Civil Code is amended to read:~~
27 ~~2932.5. Where a power to sell real property is given to a~~
28 ~~mortgagee, trustee, beneficiary of a deed of trust, or other~~
29 ~~encumbrancer, in an instrument intended to secure the payment~~
30 ~~of money, the power is part of the security and vests in any person~~
31 ~~who by assignment becomes entitled to payment of the money~~
32 ~~secured by the instrument. The power of sale may be exercised by~~
33 ~~the assignee only if the assignment is duly acknowledged and~~
34 ~~recorded.~~

35 ~~SEC. 7. Section 2934 of the Civil Code is amended to read:~~
36 ~~2934. Any assignment of a mortgage and any assignment of~~
37 ~~the beneficial interest under a deed of trust shall be recorded, and~~
38 ~~from the time the same is filed for record operates as constructive~~
39 ~~notice of the contents thereof to all persons; and any instrument~~
40 ~~by which any mortgage or deed of trust of, lien upon or interest in~~

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

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

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BILL ANALYSIS

SENATE BANKING & FINANCIAL INSTITUTIONS COMMITTEE
 Senator Juan Vargas, Chair

SB 1471 (DeSaulnier and Pavley) Hearing Date: April 18, 2012

As Amended: April 10, 2012

Fiscal: Yes

Urgency: No

SUMMARY Would require servicers, as defined, to offer borrowers a single point of contact with whom those borrowers may communicate regarding options that may be available to avoid foreclosure, would prohibit any robo-signed document, as defined, from being recorded or filed with any court, and would enact rules relating to the ability of an entity to exercise the power of sale in a mortgage or deed of trust.

DESCRIPTION

-
1. Would define "mortgage servicer" as 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.

(This differs from the federal Real Estate Settlement Procedures Act [RESPA] definition of a servicer. Under RESPA, servicing is defined as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract").

2. Effective July 1, 2013, would provide that, if a borrower is 60 days or more delinquent, the mortgage servicer must inform that borrower that if the borrower wishes to pursue an alternative to foreclosure, the servicer will establish a single point of contact (SPOC) for the borrower. Servicers must provide the identity of and contact information for a

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SPOC, within 10 business days of written or telephonic request for loss mitigation assistance from a borrower who

is 60 or more days delinquent. Servicers must provide updated contact information for a SPOC, within five business days of a change in the SPOC.

This provision differs from the SPOC requirements of the mortgage settlement (page A-21). The settlement requires servicers to promptly establish an easily accessible and reliable SPOC for each potentially-eligible first lien mortgage borrower who requests loss mitigation assistance. Servicers are also required to provide updated contact information to the borrower if the designated SPOC is reassigned, no longer employed by the servicer, or otherwise unable to act as the primary point of contact. Although the settlement does not expressly define potentially-eligible borrowers in the section covering SPOCs, page A-1 of the settlement states that its provisions are generally intended to apply to loans secured by owner-occupied properties that serve as the primary residence of the borrower.

The key difference between the SPOC provisions of this bill and the settlement relate to which party (the borrower or the servicer) has the responsibility to initiate contact regarding a SPOC. This bill requires servicers to reach out to borrowers and offer them a SPOC. The settlement requires borrowers to reach out to servicers and request a SPOC. This bill and the settlement also differ in their coverage of borrowers (as drafted, this bill would offer a SPOC to any type of borrower who is at least 60 days delinquent on any type of loan, while the settlement restricts SPOCs to potentially-eligible first lien borrowers). Finally, this bill is silent on specific situations that could lead to the need for a new SPOC (these situations are detailed in the settlement). Other differences exist ("promptly" in the settlement, versus either 10 or 5 days, depending on the situation, in the bill) but are less significant.

3. Would require the SPOC to be responsible for all of the following:
 - 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 (language taken directly from the settlement; page A-21).
 - b. Coordinating receipt of all documents associated with loan modification or loss mitigation activities and notifying the borrower of any missing documents (language taken directly from the settlement; page A-21).
 - c. Maintaining and providing accurate information about the borrower's situation and current status in the loss mitigation process (language based on, but slightly different than language in the settlement; the settlement requires the SPOC to be knowledgeable about these issues, not to maintain and provide accurate information about

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them; page A-21).

- d. 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 (language based on, but slightly different than language in the settlement; the settlement refers to MHA programs (plural), not to a single MHA program; page A-22).
 - e. Having access to individuals with the ability to stop foreclosure proceedings when necessary to comply with the MHA program or California law (language taken directly from the settlement; page A-22).
4. Would require a SPOC to remain assigned to a 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 (taken directly from the settlement; page A-22).
 5. Would require a mortgage servicer to ensure that a SPOC refers and transfers a borrower to an appropriate supervisor upon request of the borrower (based on language in the settlement; page A-23).
 6. Would prohibit an entity from recording or causing a notice of default to be recorded, or otherwise initiating the foreclosure process, unless it is the holder of the beneficial interest under the deed of trust. Would provide that an agent shall not record a notice of default or otherwise commence the foreclosure process without the

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specific direction of the actual owner of the beneficial interest under the deed of trust. (This language is not based on the settlement).

7. Would define a "robosigned document" as any document that contains factual assertions that are not accurate, are incomplete, or are unsupported by competent, reliable evidence, and would provide that a "robosigned document" also means any document that has not been reviewed by its signer to substantiate the factual assertions contained in the document. Would clarify that for purposes of the definition, multiple people may verify the document or statement, as long as the document or statement specifies the portions verified by each signer.

(The settlement handles the issue of document accuracy very differently. It does not contain a definition of robosigned document. Instead (pages A-1 and A-2), it requires that notices of default, notices of sale, and similar notices submitted by or on behalf of servicers in non-judicial foreclosures are accurate and complete, and are supported by competent and reliable evidence. Before referring a loan to

nonjudicial foreclosure, the settlement requires servicers to ensure that they have reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose. Affidavits, sworn statements, and declarations may not contain information that is false or unsubstantiated).

8. Would provide that, 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 of sale is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. Would further provide that the power of sale may be exercised by the assignee, only if the assignment is duly acknowledged and recorded. (This language is not based on the settlement. Existing law already contains this provision, but does not include the word "only" where italicized above, nor does it refer to trustees or beneficiaries of deeds of trust, where italicized).

REMEDIES

9. Would provide that any entity which records a robo-signed

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document or files a robo-signed document in any court, relative to a foreclosure proceeding, is liable for a civil penalty of \$10,000 per robo-signed document, and would authorize any governmental entity identified in Section 17204 of the Business and Professions Code (Attorney General, district attorneys, county counsel, and city attorneys), as well as the Department of Real Estate, Department of Corporations, and Department of Financial Institutions, to bring a civil action seeking those penalties (the Departments would only be authorized to bring actions against their licensees). The civil penalties provided for in the bill would be separate from and exclusive of any other remedies or liabilities that might apply.

10. Would authorize a borrower, who reasonably believes that a mortgagee, trustee, beneficiary, or authorized agent has failed to comply with the requirements of the bill, to seek an order to enjoin any pending trustee's sale in any court having jurisdiction, if a notice of sale has been recorded. Would entitle borrowers who obtain injunctions to reasonable attorneys' fees and costs, and would provide that any injunction must remain in place until the mortgagee, trustee, beneficiary, or authorized agent has complied with the provisions of the bill. Would not allow a borrower to obtain relief for any violation that is technical or de minimis in nature, such that it did not impact the borrower's ability to pursue an alternative to foreclosure.
11. Following a trustee's sale, would authorize a borrower, who reasonably believes that a mortgagee, trustee, beneficiary, or authorized agent has failed to comply with the

requirements of the bill, to seek to recover the greater of actual damages or \$10,000, plus reasonable attorneys' fees and costs, in any court of competent jurisdiction. Would authorize a court to award a borrower the greater of treble actual damages or statutory damages of \$50,000, plus attorneys' fees and costs, if it finds that a violation of the bill was intentional, reckless, or resulted from willful misconduct by a mortgagee, trustee, beneficiary, or authorized agent. Would not allow a borrower to obtain relief for any violation that is technical or de minimis in nature, such that it did not impact the borrower's ability to pursue an alternative to foreclosure.

12. Would provide that a violation of the provisions of the

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bill shall not affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice (i.e., that arms' length sales of foreclosed properties to third party purchasers will not be deemed invalid as a result of any violation of the bill, and that the interests of parties who hold liens secured by those properties, following the sales of those properties to bona fide third party purchasers, will not be invalidated).

13. Would provide an affirmative defense to liability for violations of the bill to signatories to the settlement agreement, which are in compliance with that agreement, as specified.

EXISTING LAW Discussed in the body of the analysis, where relevant.

COMMENTS

1. Purpose: The author states, "California is the midst of a major crisis in homeownership. It is estimated that 500,000 more homes will be subject to foreclosure in the next year to eighteen months. According to the Attorney General, there is a need for reforms to California's non-judicial foreclosure process to ensure fairness for homeowners. This bill would address two widespread problems.

Distressed homeowners seeking a loan modification or other form of loss mitigation complain that they cannot effectively communicate with their banks. They are required to speak to multiple people, none of whom are familiar with their circumstances. They are required to submit the same documents repeatedly, and the conversation takes months, often resulting in foreclosure when a successful loan modification process might have been possible if the communications were more effective.

This bill requires banks to designate a single point of contact, who would be responsible for guiding the homeowner through the loss-mitigation process, and for receiving

documentation and handling other communications with the borrower. The single point of contact is a concept that has been agreed to by the signatory banks to the National Mortgage Settlement, and should be made available to all

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Californians.

Another significant problem in California has been the "robosigning" of documents in the foreclosure process. The Attorney General reports that in particular the declaration required to be recorded with the notice of default to demonstrate that the lender has communicated with the borrower and apprised them to their right to pursue a loan modification or other loss mitigation measure with their lender, has been widely robo-signed. This means that it either contained false factual statements, or was signed by an individual without knowledge of the documents contents or veracity. When this document has been robo-signed, we cannot have assurance that the borrower have been apprised of all their rights under California law. This undermines the foreclosure process, which in California is not supervised by the courts." _

2. Background: On March 12, 2012, the United States Department of Justice, U.S. Department of Housing and Urban Development, and 49 state Attorneys General, including California's Attorney General Kamala Harris, announced the filing of a settlement agreement with the nation's five largest mortgage servicers (Ally/GMAC, Bank of America, Citi, JPMorgan Chase, and Wells Fargo). As part of the settlement, six documents were filed with the court: a complaint, which details the bad acts alleged by the plaintiffs to have been committed by the servicers, and five separate consent judgments (one for each of the servicers), in which the terms of the agreement between each servicer and the plaintiffs is detailed. All of these documents can be downloaded from www.nationalmortgagesettlement.com .

Although the terms of each of the five consent judgments are slightly different, each of the judgments shares many similarities. Three elements of the judgments which are identical, and which are relevant for purposes of this analysis, include the settlement term sheet (referenced in each of the settlements as Exhibit A), the enforcement provisions (Exhibits E and E-1), and the releases from prosecution that were granted to the servicers (Exhibits F and G). Other key elements of the judgments, which will not be discussed further in this analysis, include discussions of how much money each of the servicers must pay in connection with the settlement, how that money is allocated among states, how credit toward servicers' monetary

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obligations is calculated under the settlement (different types of consumer relief count differently toward servicers' monetary obligations), and how servicemembers and their dependents are covered by the settlement.

The settlement term sheet formed the basis for many of the provisions of this bill and its companion, SB 1470, and is widely expected to form the basis for national servicing standards that the federal Consumer Financial Protection Bureau is expected to propose sometime this summer.

3. How will the settlement be enforced/How does the settlement handle private rights of action? Responsibility for enforcing the terms of the settlement agreement rests with a federal enforcement monitor (Joseph Smith, former banking commissioner of North Carolina) and a Monitoring Committee, which consists of state attorneys general, state financial regulators, the U.S. Department of Justice, and the U.S. Department of Housing and Urban Development. This Monitoring Committee or any party to the consent judgments are the only entities that may bring actions to enforce the judgments. All actions must be brought in the U.S. District Court for the District of Columbia. Actions may only be brought if the time to cure a potential violation (see discussion below) has expired.

When people assert that the settlement preserves private rights of action, they are not referring to private rights to enforce the provisions of the settlement. Instead, they are referring to the fact that the state and federal releases in the settlement preserve individuals' ability to file suit for violations of residential mortgage loan origination and servicing laws, and for violations of residential foreclosure practices. The releases from prosecution contained in the settlement prohibit any of the 49 state attorneys general, any other state government entities in any of the 49 states signing the agreement, or the federal government from prosecuting civil claims related to the residential mortgage loan servicing, residential mortgage loan origination practices, and residential foreclosure practices of the signatories prior to the date of the settlement. Because these releases did not cover individual claims, individuals may continue to sue the signatories for violating state or federal law governing residential mortgage loan servicing, residential mortgage loan origination practices, or residential foreclosure

practices. It is these private rights of action that the settlement preserved, not private rights of action to enforce the terms of the settlement.

If individuals can't enforce the provisions of the settlement agreement, how will it be enforced? As noted immediately above, the terms of the settlement are enforced by the

federal enforcement monitor and the Monitoring Committee. Attorney General Harris has also appointed Irvine Law School Professor Katherine Porter to assist her in monitoring servicers' commitments to California.

Under the terms of the settlement, only two types of relief may be granted by the court (page E-15):

- a. Non-monetary equitable relief, which may include injunctive relief, direct certain specific actions be taken under the terms of the consent judgment, or comprise other non-monetary corrective action; and
- b. Civil penalties of not more than \$1 million per uncured violation (\$5 million in the event of a second uncured violation, when the first uncured violation involves widespread noncompliance). Civil penalties are distributed either to the United States, the state that prosecuted the violation, or to all states in proportion to their payouts under the terms of the settlement, depending on the nature of the violation.

Identifying Potential Violations: Each servicer is required to establish an internal quality control (QC) group that is independent from the line of business whose performance is being measured under the terms of the consent judgment. The settlement contains a series of metrics, each of which must be measured by these internal QC groups and reported upon quarterly to the monitor (page E-3).

These metrics cover all stages of the loss mitigation and foreclosure process, from initial contact through loan modification review, decision, and appeal, through foreclosure sale, as well as other topics of the consent judgment outside of the foreclosure process, such as the calculation of fees and imposition of force-placed insurance. Generally speaking, the metrics are designed to

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numerically evaluate servicers' performance across all aspects of the consent judgment. Small error rates require remediation, but do not trigger official violations. Error rates in excess of the threshold error rates identified in the consent judgment trigger official violations (what the settlement defines as potential violations; Exhibit E-1).

Servicer Right to Cure: Whenever a potential violation occurs (i.e., whenever a servicer exceeds the threshold error rate for a given metric in a given quarter), the servicer must meet and confer with the Monitoring Committee within 15 days of the submission of a report showing the violation. Servicers have a right to cure any potential violation. Potential violations are deemed cured if: a) a corrective action plan approved by the monitor is determined by the monitor to have been successfully completed, b) a quarterly report covering the cure period shows that the

threshold error rate has not been exceeded for that same metric during that period, and c) the monitor confirms the accuracy of that quarterly report (pages E-11 and E-12).

In addition to a servicer's obligation to cure a potential violation via a corrective action plan, servicers must remediate any material harm to particular borrowers identified through work performed by the servicer. Furthermore, if a servicer has a potential violation so far in excess of the threshold error rate that the monitor concludes the error is widespread, the servicer must identify other borrowers who may have been harmed by such noncompliance and remediate all such harms (page E-12).

4. Summary of Arguments in Support:

- a. Attorney General Kamala Harris is sponsoring SB 1471, and sees the bill as an important part of her Homeowner Bill of Rights legislative package. Together with other bills in the Attorney General's legislative package, the provisions of SB 1471 will help preserve homeownership for thousands of Californians who are able to make payments under modified loan terms over the long term, if given a chance. Eliminating unnecessary foreclosures will stabilize families, preserve communities, reduce blight, and allow California's housing market to recover sooner. Ms. Harris' investigations have revealed that the foreclosure process has been undermined by opaque industry practices that have caused chaos in the loan modification process. This has prejudiced homeowners' ability to prevent foreclosures and has, in some cases, resulted in wrongful foreclosures. Under some circumstances, homeowners have little recourse to challenge foreclosures that may have been completed unlawfully.

The SPOC provision of SB 1471 was included in the bill, as a response to homeowners' frustration regarding their inability to contact a bank representative who knows the status of their loan modification application. The

robosigning provision was included, based on the Attorney General's observation of robosigning involving the declaration required by Civil Code Section 2923.5.

- b. Consumers' Union (CU) asserts that preventing unnecessary foreclosures in California at the earliest stage possible is in everyone's best interest. CU cites the findings of an audit commissioned by San Francisco Assessor-Recorder Phil Ting, which found significant improprieties in the nonjudicial foreclosures conducted in the City and County of San Francisco. CU believes that the San Francisco experience is just the tip of the iceberg of a much larger problem plaguing California. SB 1471 would prevent the types of improprieties documented in the San Francisco audit and would bring much-needed relief to homeowners navigating the complex foreclosure process, by requiring that servicers provide homeowners with a specific person to talk to at their lending institution.

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The Center for Responsible Lending (CRL) is supportive of SB 1471 for the same reasons as CU. CRL adds, "SB 1471 will enhance fairness in the foreclosure and modification processes by requiring that banks use accurate and reliable documents when pursuing foreclosure, and by improving the quality of information provided to homeowners who are subject to foreclosure."

Similar expressions of support were submitted by San Francisco Assessor-Recorder Phil Ting, PICO California, the California Professional Firefighters, SEIU, AFSCME, and the Lutheran Office of Public Policy-California.

5. Summary of Arguments in Opposition:

- a. A coalition of trade associations representing the financial services industry and the secondary mortgage market raised several concerns in their letter of opposition. Well-intentioned efforts to help distressed borrowers may further restrict access to credit in the future and have a real impact on viable new homebuyers seeking to achieve the American Dream. Advancing legislation that creates additional procedural hurdles or conflicting layers of bureaucracy for loan servicers, without addressing the borrower's underlying financial condition, may ultimately miss the mark of resolving core economic issues, and will ultimately prove unsuccessful at solving this complex problem. A few of the specific comments from the coalition's letter are summarized below.

- i. Robosigning was a criticism in judicial foreclosure states. While the proponents have stated that declarations filed under the borrower outreach provisions of Civil Code Section 2923.5 were robo-signed, those assertions are contrary to the

findings of the appellate court decision in Mabry v. Aurora Loan Services. In that decision, the court found that the declaration required pursuant to Section 2923.5 need not be signed under penalty of perjury, and further stated that the way Section 2923.5 is set up, too many people are necessarily involved in the process for any one person to likely be in the position where he or she could swear that all the requirements of the declaration were met.

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ii. A temporary situation does not require a permanent solution. SB 1471 proposes permanent changes to law that are extraordinarily restrictive and draconian. The nationwide mortgage settlement has a sunset date, and SB 1471 should, as well.

iii. SB 1471 fails to narrowly target at-risk borrowers, and applies too broadly. It promotes strategic defaults, allows investors and speculators to crowd out borrowers with financial hardship, applies to commercial property, and fails to require tender by borrowers as a symbol of good faith. For borrowers who strategically default and have no intention of remaining in their homes, the bill will be used as a delay and a leveraging tactic.

iv. SB 1471 will invite litigation through the inclusion of private rights of action. Exposing entities and individuals to excessive litigation risk will not attract and encourage creditors and investors to inject the capital necessary to revive California's residential housing marketplace.

a. The California Land Title Association (CLTA) acknowledges that the inclusion of language intended to protect bona fide purchasers and bona fide encumbrancers will provide them with an affirmative defense against claims asserting the invalidity of title transfer. CLTA notes, however, that this defense must be asserted by a new homebuyer/BFP after he or she is sued, and will do nothing to dissuade delinquent borrowers and their attorneys from naming BFPs in litigation that is likely to flow from the enactment of SB 1471. These new homebuyers will be saddled with legal costs in the thousands of dollars, simply to hire attorneys to file motions to dismiss based on the BFP protections in the bill. Homebuyers fortunate enough to have purchased a homeowner's title policy following a foreclosure sale will be able to have their title insurer defend them, but they will have to pay a significant premium to obtain their new title policies for that reason.

CLTA observes that SB 1471 will have a negative impact on California's real estate economy and the secondary market. Currently, lender's title policies (i.e.,

policies to protect the lender's security interest in a home) attach to a borrower's loan and follow that loan, if it is sold into the secondary market. SB 1471 will introduce several new risks to title and will likely cause the title industry to reevaluate what coverage it will be able to offer to lenders. The likelihood that lenders will be unable to obtain title policies that limit their potential for risk and loss will translate to diminished secondary market interest in the loans these lenders make. Secondary market buyers seeking to assemble securitized pools of loans will look less favorably on loans that carry a potential for risk and loss due to title challenges.

- b. The California Association of Realtors characterizes SB 1471 as excessive and premature. It will reduce the availability of mortgage credit and increase the cost of funds for legitimate, qualified borrowers attempting to participate in the emerging recovery of the California real estate market. It is premature to lock into California statute some version of the settlement before it has been proven in the market.

Furthermore, codifying a robo-signing offense in California law is an inappropriate borrowing from the judicial foreclosure process, and blurs the distinction between judicial and nonjudicial foreclosure. Pushing lenders and servicers toward the use of judicial foreclosure would dramatically increase the cost to the state of enforcing legitimate security claims, and doubtless increase the costs of funds to homeowners. Preliminary reports from Nevada suggest that its experiment with a similar certification rule has had a dramatically negative effect on the ability to utilize legitimate nonjudicial foreclosure processes.

- c. The California Chamber of Commerce labels SB 1471 a job-killer bill, because it will impede California's housing market recovery by allowing all borrowers, including strategic defaulters and investors, to interrupt the foreclosure process to forestall legitimate foreclosures. The enforcement provisions of SB 1471 will incent litigation by imposing strict liability with no right to cure, and inflicting statutory, actual, treble, and punitive damages. The measure will likely limit future access to credit, discourage investment capital

for the purposes of residential mortgage lending, or impose a significant risk-based premium, resulting in

higher costs for consumers. Forestalling the foreclosure process will further frustrate local governments struggling with properties in disrepair during the foreclosure process, continue in the trend of reduced property tax revenue for local governments, and artificially sustain depressed property values.

d. The Civil Justice Association of California believes that SB 1471 will force nonjudicial foreclosures into court. The bill creates expansive, new obligations that are enforceable with lucrative penalties, statutory damages, and attorney's fees. The bill's requirements and prohibitions are ambiguous and are outside of the carefully negotiated national mortgage settlement. California's foreclosure process is already highly regulated. There is no need to insert lawyers and lawsuits into the process. _

6. Amendments:

a. Should this bill's definition of a mortgage servicer be amended to match the RESPA definition? RESPA is the federal law that regulates servicing activities, and seems relevant to the discussion, particularly if the nationwide servicing standards anticipated to be released by the CFPB utilize the RESPA definition of servicer and servicing.

b. Amendments are necessary to clarify the scope of the bill (i.e., to clarify what types of mortgages and deeds of trust are intended to be covered by the provisions of the bill). As drafted, the bill would apply to all mortgages and deeds of trust on which nonjudicial foreclosures are initiated, including single-family residential (both owner-occupied and non owner-occupied), multi-family residential, and commercial properties. The settlement generally applies to owner-occupied properties that serve as the primary residence of the borrower. SB 1137 (Chapter 69, Statutes of 2008) also applied only to owner-occupied principal residences.

Staff suggests the following amendments to clarify this bill's scope. They amendments are drafted in a manner intended to conform the bill to the owner-occupied,

residential real property scope of SB 1137 and the settlement. If the authors and sponsor wish to select a different scope, they need only substitute different language for the following:

Insert the following on page 5, between lines 5 and 6; page 8, between lines 20 and 21: "This section shall apply only to mortgages and deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. For purposes of this section, "owner-occupied" means that the residence is the principal residence of the borrower as indicated to the

lender in loan documents."

- c. As noted above, this bill differs from the settlement regarding the manner in which servicers are required to assign a SPOC. Under the settlement, servicers are required to promptly establish an easily accessible and reliable SPOC for each potentially-eligible first lien mortgage borrower who requests loss mitigation assistance. Borrowers need not be at least 60 days delinquent before requesting a SPOC. Under the bill, servicers are required to contact every borrower who is at least 60 days delinquent and inform them that they may request a SPOC.

If the authors and sponsor wish to more closely conform the SPOC assignment language of the bill to similar language in the settlement, the following amendments are suggested:

Page 3, strike lines 10 through 19, page 4, strike lines 1 through 5, and page 5, strike "within 10 business days" and insert: (a) A mortgagee, beneficiary, or authorized agent shall establish an easily accessible and reliable single point of contact (SPOC) for each potentially-eligible first lien mortgage borrower who requests loss mitigation assistance, within 10 business days of receiving a borrower's request. For purposes of this section, a potentially-eligible borrower is one who owns and occupies as their principal residence the property that secures the loan for which the borrower is requesting loss mitigation assistance. Requests for a SPOC may be made in writing or telephonically."

- d. This bill includes a provision (page 6, lines 19

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through 25) that would prohibit an entity from recording or causing a notice of default to be recorded, or otherwise initiating the foreclosure process, unless it is the holder of the beneficial interest under the deed of trust. The second sentence of this provision provides that 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. This language is not based on the settlement and is unclear, as drafted.

At a minimum, this provision requires technical amendments. The first sentence refers only to deeds of trust, and should probably refer to mortgages and deeds of trust. The second sentence refers to "an agent," but fails to identify which agent. Presumably, the second sentence is intended to refer to an agent acting on behalf of the holder of the beneficial interest, but this requires clarification. Finally, the two sentences refer differently to the party with authority to initiate a foreclosure; the first sentence refers to the "holder" of the beneficial interest, while the second sentence refers

to the "actual owner" of the interest. The two sentences should be conformed.

More generally, it might also be helpful if the logic behind the inclusion of this provision were clarified. This bill's sponsor has indicated that the language is intended to codify the so-called "Gomes" decision (Jose Gomes v. Countrywide Home Loans, Inc., 192 Cal. App. 4th 1149, February 18, 2011). In that decision, the Fourth Appellate District of the California Court of Appeal ruled against the plaintiff, and found that the borrower had not identified a legal basis on which to challenge his foreclosure. Because the Gomes court did not find the existence of a problem with California law, it is unclear from a reading of this provision what problem it is trying to address. This clarity would be extremely useful, given the likelihood that the meaning of this section will be litigated.

- e. The provision of this bill, which attempts to provide protections to bona fide purchasers of foreclosed properties, and to those who hold liens secured by the properties purchased by these bona fide purchasers, appears to be broader than intended (page 9, lines 5

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through 7). As drafted, the bill states that a violation of "this article" shall not affect the validity of sales to so-called BFPs, where article refers to an article of the Civil Code governing Mortgages in General. Staff understands that the authors and sponsors intended to provide BFP protections for violations of "this act," not "this article."

Page 9, line 5, strike "article" and insert: act

- f. The private rights of action authorized by this bill would benefit from clarification (page 8, lines 22 through 40 and page 9, lines 1 through 4). As drafted, they allow a borrower to seek an order to enjoin a trustee sale, or an order seeking damages, if the borrower has a reasonable belief that a mortgagee, trustee, beneficiary, or authorized agent failed to comply with specified provisions of the bill. The bill implies, but does not expressly direct the court to find that a violation has occurred, before issuing an injunction or awarding damages. The bill also contains language intended to protect servicers from lawsuits over violations of the bill that were technical or de minimis in nature, and which did not impact a borrower's ability to pursue an alternative to foreclosure, but this language appears in a separate subdivision as the private rights, and is unclear regarding what constitutes an "ability to pursue an alternative to foreclosure."

The following language is suggested, in lieu of the existing language of 2924.18(a) (page 8, lines 22 through 31), to ensure that: i) an injunction or awarding of

damages only occurs after a court finds that a violation has occurred, and ii) a borrower is only entitled to relief, if that violation resulted in that borrower being denied approval for a foreclosure avoidance alternative for which he or she applied:

"A court of competent jurisdiction may enjoin a pending trustee's sale, if a notice of sale has been recorded, and a borrower presents evidence satisfactory to the court, regarding the existence of a violation of Section 2923.7, 2924, 2924.9, or 2923.5 by a mortgagee, trustee, beneficiary, or authorized agent, which resulted in the borrower being denied approval for a foreclosure avoidance alternative for which that borrower applied.

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Any injunction shall remain in place until the mortgagee, trustee, beneficiary, or authorized agent has complied with the requirements of the section or sections that were violated. A borrower who obtains an injunction shall be entitled to reasonable attorneys' fees and costs."

The following is suggested in lieu of the existing language of 2924.18(b) (page 8, lines 32 through 38): "A court of competent jurisdiction may award a borrower the greater of actual damages or ten thousand dollars (\$10,000), plus reasonable attorney's fees and costs, if a trustee's sale has been concluded, and a borrower presents evidence satisfactory to the court regarding the existence of a violation of Section 2923.7, 2924, 2924.9, or 2923.5 by a mortgagee, trustee, beneficiary, or authorized agent, which resulted in the borrower being denied approval for a foreclosure avoidance alternative for which that borrower applied."

If these amendments are accepted, the text on page 9, lines 8 through 12, should be deleted.

g. If the amendments described in "f" immediately above are not accepted by the authors and sponsor, the subdivision of Section 2924.18, which refers to violations that are technical or de minimis in nature, requires technical amendment to add a few words that are missing from SB 1471, but which appear in a virtually identical section of SB 1470.

Page 9, line 10, strike "that" and insert: "such that it"

h. This bill is silent on whether it intends to authorize class action lawsuits to enforce its provisions. Staff understands that neither the sponsor nor this bill's authors intend class actions. The following language is suggested as an addition to Section 6 of the bill (Civil Code Section 2924.18) to clarify this intent:

Page 9, between lines 4 and 5, insert: (c) The provisions

of this act shall not be enforceable through a class action lawsuit. No court shall have authority to certify a class of plaintiffs in a class action lawsuit brought to enforce the provisions of this bill.

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- a. The provision which provides signatories to the settlement with an affirmative defense to liability for violations of the bill under certain circumstances is unclear as to its intent and its effect (page 9, lines 13 through 19). It also incorrectly refers to the settlement agreement (it only references the agreement reached with Bank of America, and not the agreements reached with the other four signatories). Substitute language is not suggested at this time, because discussions between the signatories and the authors and sponsor on this topic are still preliminary.

Staff observes, however, that while a compromise on this language is currently unclear, the existing disagreement on this issue is quite clear. The signatories favor language that would exempt them from the provisions of the bill that are based on the settlement, during the pendency of the settlement. Their argument is based on the fact that the settlement already contains enforcement mechanisms. The settlement does not authorize individuals to bring suit against the signatories for violations of the settlement, and they do not believe it is appropriate for California law to authorize such suits.

Those who would like to see the signatories subject to private rights of action for violations of this bill believe that signatories and non-signatories alike should be answerable for their compliance (or noncompliance) with this bill. They are concerned that individuals do not have redress against servicers who violate the settlement, and view this bill as a way to provide such redress.

-
- a. Should this bill have a sunset date? Virtually all of the problems it is trying to address occurred as a result of the foreclosure crisis, a lengthy period of economic stagnation which will eventually end. Will the requirements of this bill still be appropriate, after California's housing market has returned to the position of strength it has traditionally held within California's economy, and once foreclosures occur most frequently on properties that hold more value than is owed to the foreclosing beneficiary?

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- b. Both this bill and SB 1470 amend Section 2924 of the Civil Code, but do so in different ways. The sponsor of both this bill and SB 1470 also envision having the Office of Homeowner Protection handle borrower questions and complaints regarding the provisions of both bills. Double-jointing amendments will be necessary, and contingent enactment may be advisable, once the bills are closer to their final forms. _

7. Related Legislation:

- a. SB 1470 (Leno et al) and AB 1602 (Eng and Feuer), 2011-12 Legislative Session: Would enact several changes to the rules governing the nonjudicial foreclosure process for residential real property, establish an Office of Homeowner Protection to help respond to borrower inquiries about and complaints regarding compliance with the new rules, and provide for enforcement mechanisms, as specified. SB 1470 is pending a hearing in this Committee. AB 1602 is pending a hearing in the Assembly Banking and Finance Committee.
- b. AB 2425 (Mitchell): Identical to this bill. Pending a hearing in the Assembly Banking and Finance Committee.

LIST OF REGISTERED SUPPORT/OPPOSITION

Support

Attorney General Kamala Harris (sponsor)
AFSCME
California Professional Firefighters
Center for Responsible Lending
Consumers Union
Lutheran Office of Public Policy-California
PICO California
San Francisco Office of the Assessor-Recorder
SEIU

Opposition

California Association of Realtors
California Bankers Association
California Chamber of Commerce

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California Chamber of Commerce
California Credit Union League
California Financial Services Association
California Independent Bankers
California Land Title Association
California Mortgage Association
California Mortgage Bankers Association

Civil Justice Association of California
Securities Industry and Financial Markets Association
United Trustees Association

Consultant: Eileen Newhall (916) 651-4102

AMENDED IN SENATE APRIL 11, 2012
AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1472

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

February 24, 2012

An act to amend Section 2929.3 of the ~~Code of Civil Procedure and Civil Code~~, and to amend Sections 17980 and 17980.7 of the Health and Safety Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

SB 1472, as amended, Pavley. Real property: blight.

(1) Existing law, until January 1, 2013, requires a legal owner to maintain vacant residential property purchased at a foreclosure sale or acquired by that owner through foreclosure under a mortgage or deed of trust. Existing law, until January 1, 2013, authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. Existing law, until January 1, 2013, requires a governmental entity that seeks to impose those fines and penalties to give notice of the claimed violation and an opportunity to correct the violation at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.

This bill would ~~change the civil fine to up to \$5,000 per day for a violation. This bill would~~ delete the repeal clause for these provisions and thus extend the operation of these provisions indefinitely.

(2) The State Housing Law requires the housing or building department or, if there is no building department, the health department, of every city, county, or city and county, or a specified environmental

agency, to enforce within its jurisdiction all of the State Housing Law, the building standards published in the State Building Standards Code, and other specified rules and regulations. If there is a violation of these provisions or any order or notice that gives a reasonable time to correct that violation, or if a nuisance exists, an enforcement agency is required, after 30 days' notice to abate the nuisance, to institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

This bill would prohibit an enforcement agency from commencing any action or proceeding until at least 60 days after a person takes title to the property, unless a shorter period of time is deemed necessary by the enforcement agency, as specified, if the person has purchased and is in the process of abating any violation at a residential property that had been foreclosed on or after January 1, 2008. This bill would require any entity that releases a lien securing a deed of trust or mortgage on a property for which a notice of pendency of action, as defined, has been recorded against the property, as specified, to notify the enforcement agency that issued the order or notice within 30 days of releasing the lien.

(3) Existing law authorizes, among other things, the enforcement agency to seek and the court to order imposition of specified penalties or the enforcement agency, tenant, or tenant association or organization to seek, and the court to order, the appointment of a receiver for a substandard building, if the owner of the property fails to comply within a reasonable time with the terms of an order or notice.

This bill would authorize a court to require the owner of the property to pay all unrecovered costs associated with the receivership in addition to any other remedy authorized by law.

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

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

1 SECTION 1. Section 2929.3 of the Civil Code is amended to
2 read:
3 2929.3. (a) (1) A legal owner shall maintain vacant residential
4 property purchased by that owner at a foreclosure sale, or acquired
5 by that owner through foreclosure under a mortgage or deed of
6 trust. A governmental entity may impose a civil fine of up to ~~five~~
7 *one thousand dollars* (~~\$5,000~~) (*\$1,000*) per day for a violation. If

1 the governmental entity chooses to impose a fine pursuant to this
2 section, it shall give notice of the alleged violation, including a
3 description of the conditions that gave rise to the allegation, and
4 notice of the entity's intent to assess a civil fine if action to correct
5 the violation is not commenced within a period of not less than 14
6 days and completed within a period of not less than 30 days. The
7 notice shall be mailed to the address provided in the deed or other
8 instrument as specified in subdivision (a) of Section 27321.5 of
9 the Government Code, or, if none, to the return address provided
10 on the deed or other instrument.

11 (2) The governmental entity shall provide a period of not less
12 than 30 days for the legal owner to remedy the violation prior to
13 imposing a civil fine and shall allow for a hearing and opportunity
14 to contest any fine imposed. In determining the amount of the fine,
15 the governmental entity shall take into consideration any timely
16 and good faith efforts by the legal owner to remedy the violation.
17 The maximum civil fine authorized by this section is ~~five one~~
18 ~~thousand dollars~~ ~~(\$5,000)~~ *(\$1,000)* for each day that the owner
19 fails to maintain the property, commencing on the day following
20 the expiration of the period to remedy the violation established by
21 the governmental entity.

22 (3) Subject to the provisions of this section, a governmental
23 entity may establish different compliance periods for different
24 conditions on the same property in the notice of alleged violation
25 mailed to the legal owner.

26 (b) For purposes of this section, "failure to maintain" means
27 failure to care for the exterior of the property, including, but not
28 limited to, permitting excessive foliage growth that diminishes the
29 value of surrounding properties, failing to take action to prevent
30 trespassers or squatters from remaining on the property, or failing
31 to take action to prevent mosquito larvae from growing in standing
32 water or other conditions that create a public nuisance.

33 (c) Notwithstanding subdivisions (a) and (b), a governmental
34 entity may provide less than 30 days' notice to remedy a condition
35 before imposing a civil fine if the entity determines that a specific
36 condition of the property threatens public health or safety and
37 provided that notice of that determination and time for compliance
38 is given.

39 (d) Fines and penalties collected pursuant to this section shall
40 be directed to local nuisance abatement programs.

1 (e) A governmental entity may not impose fines on a legal owner
2 under both this section and a local ordinance.

3 (f) These provisions shall not preempt any local ordinance.

4 (g) This section shall only apply to residential real property.

5 (h) The rights and remedies provided in this section are
6 cumulative and in addition to any other rights and remedies
7 provided by law.

8 SEC. 2. Section 17980 of the Health and Safety Code is
9 amended to read:

10 17980. (a) If any building is constructed, altered, converted,
11 or maintained in violation of any provision of, or in violation of
12 any order or notice that gives a reasonable time to correct that
13 violation issued by an enforcement agency pursuant to this part,
14 the building standards published in the California Building
15 Standards Code, or other rules and regulations adopted pursuant
16 to this part, or if a nuisance exists in any building or upon the lot
17 on which it is situated, the enforcement agency shall, after 30 days'
18 notice to abate the nuisance or violation, or a notice to abate with
19 a shorter period of time if deemed necessary by the enforcement
20 agency to prevent or remedy an immediate threat to the health and
21 safety of the public or occupants of the structure, institute any
22 appropriate action or proceeding to prevent, restrain, correct, or
23 abate the violation or nuisance. Notwithstanding the above, if a
24 person has purchased and is in the process of abating any violation
25 at a residential property that had been foreclosed on or after January
26 1, 2008, an enforcement agency shall not commence any action
27 or proceeding until at least 60 days after the person takes title to
28 the property, unless a shorter period of time is deemed necessary
29 by the enforcement agency to prevent or remedy an immediate
30 threat to the health and safety of the public or occupants of the
31 structure.

32 (b) If any entity releases a lien securing a deed of trust or
33 mortgage on a property for which a notice of pendency of action,
34 as defined in Section 405.2 of the Code of Civil Procedure, has
35 been recorded against the property by an enforcement agency
36 pursuant to subdivision (a) of Section 17985 of the Health and
37 Safety Code or Section 405.7 or 405.20 of the Code of Civil
38 Procedure, it shall notify the enforcement agency that issued the
39 order or notice within 30 days of releasing the lien.

1 (c) (1) Whenever the enforcement agency has inspected or
2 caused to be inspected any building and has determined that the
3 building is a substandard building or a building described in Section
4 17920.10, the enforcement agency shall commence proceedings
5 to abate the violation by repair, rehabilitation, vacation, or
6 demolition of the building. The enforcement agency shall not
7 require the vacating of a residential building unless it concurrently
8 requires expeditious demolition or repair to comply with this part,
9 the building standards published in the California Building
10 Standards Code, or other rules and regulations adopted pursuant
11 to this part. The owner shall have the choice of repairing or
12 demolishing. However, if the owner chooses to repair, the
13 enforcement agency shall require that the building be brought into
14 compliance according to a reasonable and feasible schedule for
15 expeditious repair. The enforcement agency may require vacation
16 and demolition or may itself vacate the building, repair, demolish,
17 or institute any other appropriate action or proceeding, if any of
18 the following occur:

19 (A) The repair work is not done within the period required by
20 the notice.

21 (B) The owner does not make a timely choice of repair or
22 demolition.

23 (C) The owner selects an option which cannot be completed
24 within a reasonable period of time, as determined by the
25 enforcement agency, for any reason, including, but not limited to,
26 an outstanding judicial or administrative order.

27 (2) In deciding whether to require vacation of the building or
28 to repair as necessary, the enforcement agency shall give preference
29 to the repair of the building whenever it is economically feasible
30 to do so without having to repair more than 75 percent of the
31 dwelling, as determined by the enforcement agency, and shall give
32 full consideration to the needs for housing as expressed in the local
33 jurisdiction's housing element.

34 (d) (1) Notwithstanding subdivision (b) and notwithstanding
35 local ordinances, tenants in a residential building shall be provided
36 copies of any of the following:

37 (A) The notice of any violation described in subdivision (a) that
38 affects the health and safety of the occupants and that causes the
39 building to be substandard pursuant to Section 17920.3 or in
40 violation of Section 17920.10.

1 (B) An order of the code enforcement agency issued after
2 inspection of the premises declaring the dwelling to be in violation
3 of any provision described in subdivision (a).

4 (C) The enforcement agency's decision to repair or demolish.

5 (D) The issuance of a building or demolition permit following
6 the abatement order of an enforcement agency.

7 (2) Each document provided pursuant to paragraph (1) shall be
8 provided to each affected residential unit by the enforcement
9 agency that issued the order or notice, in the manner prescribed
10 by subdivision (a) of Section 17980.6.

11 (e) All notices issued by the enforcement agency to correct
12 violations or to abate nuisances shall contain a provision notifying
13 the owner that, in accordance with Sections 17274 and 24436.5
14 of the Revenue and Taxation Code, a tax deduction may not be
15 allowed for interest, taxes, depreciation, or amortization paid or
16 incurred in the taxable year. In addition, in Los Angeles County,
17 the notice shall contain a provision notifying the owner that within
18 10 days of recordation of a notice of substandard conditions or
19 similar document, the owner is required to comply with Section
20 17997.

21 (f) The enforcement agency may charge the owner of the
22 building for its postage or mileage cost for sending or posting the
23 notices required to be given by this section.

24 SEC. 3. Section 17980.7 of the Health and Safety Code is
25 amended to read:

26 17980.7. If the owner fails to comply within a reasonable time
27 with the terms of the order or notice issued pursuant to Section
28 17980.6, the following provisions shall apply:

29 (a) The enforcement agency may seek and the court may order
30 imposition of the penalties provided for under Chapter 6
31 (commencing with Section 17995).

32 (b) (1) The enforcement agency may seek and the court may
33 order the owner to not claim any deduction with respect to state
34 taxes for interest, taxes, expenses, depreciation, or amortization
35 paid or incurred with respect to the cited structure, in the taxable
36 year of the initial order or notice, in lieu of the enforcement agency
37 processing a violation in accordance with Sections 17274 and
38 24436.5 of the Revenue and Taxation Code.

39 (2) If the owner fails to comply with the terms of the order or
40 notice to correct the condition that caused the violation pursuant

1 to Section 17980.6, the court may order the owner to not claim
2 these tax benefits for the following year.

3 (c) The enforcement agency, tenant, or tenant association or
4 organization may seek and the court may order, the appointment
5 of a receiver for the substandard building pursuant to this
6 subdivision. In its petition to the court, the enforcement agency,
7 tenant, or tenant association or organization shall include proof
8 that notice of the petition was served not less than three days prior
9 to filing the petition, pursuant to Article 3 (commencing with
10 Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of
11 Civil Procedure, to all persons with a recorded interest in the real
12 property upon which the substandard building exists.

13 (1) In appointing a receiver, the court shall consider whether
14 the owner has been afforded a reasonable opportunity to correct
15 the conditions cited in the notice of violation.

16 (2) The court shall not appoint any person as a receiver unless
17 the person has demonstrated to the court his or her capacity and
18 expertise to develop and supervise a viable financial and
19 construction plan for the satisfactory rehabilitation of the building.
20 A court may appoint as a receiver a nonprofit organization or
21 community development corporation. In addition to the duties and
22 powers that may be granted pursuant to this section, the nonprofit
23 organization or community development corporation may also
24 apply for grants to assist in the rehabilitation of the building.

25 (3) If a receiver is appointed, the owner and his or her agent of
26 the substandard building shall be enjoined from collecting rents
27 from the tenants, interfering with the receiver in the operation of
28 the substandard building, and encumbering or transferring the
29 substandard building or real property upon which the building is
30 situated.

31 (4) Any receiver appointed pursuant to this section shall have
32 all of the following powers and duties in the order of priority listed
33 in this paragraph, unless the court otherwise permits:

34 (A) To take full and complete control of the substandard
35 property.

36 (B) To manage the substandard building and pay expenses of
37 the operation of the substandard building and real property upon
38 which the building is located, including taxes, insurance, utilities,
39 general maintenance, and debt secured by an interest in the real
40 property.

1 (C) To secure a cost estimate and construction plan from a
2 licensed contractor for the repairs necessary to correct the
3 conditions cited in the notice of violation.

4 (D) To enter into contracts and employ a licensed contractor as
5 necessary to correct the conditions cited in the notice of violation.

6 (E) To collect all rents and income from the substandard
7 building.

8 (F) To use all rents and income from the substandard building
9 to pay for the cost of rehabilitation and repairs determined by the
10 court as necessary to correct the conditions cited in the notice of
11 violation.

12 (G) To borrow funds to pay for repairs necessary to correct the
13 conditions cited in the notice of violation and to borrow funds to
14 pay for any relocation benefits authorized by paragraph (6) and,
15 with court approval, secure that debt and any moneys owed to the
16 receiver for services performed pursuant to this section with a lien
17 on the real property upon which the substandard building is located.
18 The lien shall be recorded in the county recorder's office in the
19 county within which the building is located.

20 (H) To exercise the powers granted to receivers under Section
21 568 of the Code of Civil Procedure.

22 (5) The receiver shall be entitled to the same fees, commissions,
23 and necessary expenses as receivers in actions to foreclose
24 mortgages.

25 (6) If the conditions of the premises or the repair or rehabilitation
26 thereof significantly affect the safe and sanitary use of the
27 substandard building by any tenant, to the extent that the tenant
28 cannot safely reside in his or her unit, then the receiver shall
29 provide relocation benefits in accordance with subparagraph (A)
30 of paragraph (3) of subdivision (d).

31 (7) The relocation compensation provided for in this section
32 shall not preempt any local ordinance that provides for greater
33 relocation assistance.

34 (8) In addition to any reporting required by the court, the
35 receiver shall prepare monthly reports to the state or local
36 enforcement agency which shall contain information on at least
37 the following items:

38 (A) The total amount of rent payments received.

39 (B) Nature and amount of contracts negotiated relative to the
40 operation or repair of the property.

1 (C) Payments made toward the repair of the premises.

2 (D) Progress of necessary repairs.

3 (E) Other payments made relative to the operation of the
4 building.

5 (F) Amount of tenant relocation benefits paid.

6 (9) The receiver shall be discharged when the conditions cited
7 in the notice of violation have been remedied in accordance with
8 the court order or judgment and a complete accounting of all costs
9 and repairs has been delivered to the court. Upon removal of the
10 condition, the owner, the mortgagee, or any lienor of record may
11 apply for the discharge of all moneys not used by the receiver for
12 removal of the condition and all other costs authorized by this
13 section.

14 (10) After discharging the receiver, the court may retain
15 jurisdiction for a time period not to exceed 18 consecutive months,
16 and require the owner and the enforcement agency responsible for
17 enforcing Section 17980 to report to the court in accordance with
18 a schedule determined by the court.

19 (11) The prevailing party in an action pursuant to this section
20 shall be entitled to reasonable attorney's fees and court costs as
21 may be fixed by the court.

22 (12) The county recorder may charge and collect fees for the
23 recording of all notices and other documents required by this
24 section pursuant to Article 5 (commencing with Section 27360)
25 of Chapter 6 of Division 2 of Title 3 of the Government Code.

26 (13) This section shall not be construed to limit those rights
27 available to tenants and owners under any other provision of the
28 law.

29 (14) This section shall not be construed to deprive an owner of
30 a substandard building of all procedural due process rights
31 guaranteed by the California Constitution and the United States
32 Constitution, including, but not limited to, receipt of notice of the
33 violation claimed and an adequate and reasonable period of time
34 to comply with any orders which are issued by the enforcement
35 agency or the court.

36 (15) Upon the request of a receiver, a court may require the
37 owner of the property to pay all unrecovered costs associated with
38 the receivership in addition to any other remedy authorized by
39 law.

1 (d) If the court finds that a building is in a condition which
2 substantially endangers the health and safety of residents pursuant
3 to Section 17980.6, upon the entry of any order or judgment, the
4 court shall do all of the following:

5 (1) Order the owner to pay all reasonable and actual costs of
6 the enforcement agency including, but not limited to, inspection
7 costs, investigation costs, enforcement costs, attorney fees or costs,
8 and all costs of prosecution.

9 (2) Order that the local enforcement agency shall provide the
10 tenant with notice of the court order or judgment.

11 (3) (A) Order that if the owner undertakes repairs or
12 rehabilitation as a result of being cited for a notice under this
13 chapter, and if the conditions of the premises or the repair or
14 rehabilitation thereof significantly affect the safe and sanitary use
15 of the premises by any lawful tenant, so that the tenant cannot
16 safely reside in the premises, then the owner shall provide or pay
17 relocation benefits to each lawful tenant. These benefits shall
18 consist of actual reasonable moving and storage costs and
19 relocation compensation. The actual moving and storage costs
20 shall consist of all of the following:

21 (i) Transportation of the tenant's personal property to the new
22 location. The new location shall be in close proximity to the
23 substandard premises, except where relocation to a new location
24 beyond a close proximity is determined by the court to be justified.

25 (ii) Packing, crating, unpacking, and uncrating the tenant's
26 personal property.

27 (iii) Insurance of the tenant's property while in transit.

28 (iv) The reasonable replacement value of property lost, stolen,
29 or damaged (not through the fault or negligence of the displaced
30 person, his or her agent or employee) in the process of moving,
31 where insurance covering the loss, theft, or damage is not
32 reasonably available.

33 (v) The cost of disconnecting, dismantling, removing,
34 reassembling, reconnecting, and reinstalling machinery, equipment,
35 or other personal property of the tenant, including connection
36 charges imposed by utility companies for starting utility service.

37 (B) (i) The relocation compensation shall be an amount equal
38 to the differential between the contract rent and the fair market
39 rental value determined by the federal Department of Housing and
40 Urban Development for a unit of comparable size within the area

1 for the period that the unit is being repaired, not to exceed 120
2 days.

3 (ii) If the court finds that a tenant has been substantially
4 responsible for causing or substantially contributing to the
5 substandard conditions, then the relocation benefits of this section
6 shall not be paid to this tenant. Each other tenant on the premises
7 who has been ordered to relocate due to the substandard conditions
8 and who is not substantially responsible for causing or contributing
9 to the conditions shall be paid these benefits and moving costs at
10 the time that he or she actually relocates.

11 (4) Determine the date when the tenant is to relocate, and order
12 the tenant to notify the enforcement agency and the owner of the
13 address of the premises to which he or she has relocated within
14 five days after the relocation.

15 (5) (A) Order that the owner shall offer the first right to
16 occupancy of the premises to each tenant who received benefits
17 pursuant to subparagraph (A) of paragraph (3), before letting the
18 unit for rent to a third party. The owner's offer on the first right
19 to occupancy to the tenant shall be in writing, and sent by first-class
20 certified mail to the address given by the tenant at the time of
21 relocation. If the owner has not been provided the tenant's address
22 by the tenant as prescribed by this section, the owner shall not be
23 required to provide notice under this section or offer the tenant the
24 right to return to occupancy.

25 (B) The tenant shall notify the owner in writing that he or she
26 will occupy the unit. The notice shall be sent by first-class certified
27 mail no later than 10 days after the notice has been mailed by the
28 owner.

29 (6) Order that failure to comply with any abatement order under
30 this chapter shall be punishable by civil contempt, penalties under
31 Chapter 6 (commencing with Section 17995), and any other
32 penalties and fines as are available.

33 (e) The initiation of a proceeding or entry of a judgment pursuant
34 to this section or Section 17980.6 shall be deemed to be a
35 "proceeding" or "judgment" as provided by paragraph (4) or (5)
36 of subdivision (a) of Section 1942.5 of the Civil Code.

37 (f) The term "owner," for the purposes of this section, shall
38 include the owner, including any public entity that owns residential
39 real property, at the time of the initial notice or order and any

1 successor in interest who had actual or constructive knowledge of
2 the notice, order, or prosecution.

3 (g) These remedies shall be in addition to those provided by
4 any other law.

5 (h) This section and Section 17980.6 shall not impair the rights
6 of an owner exercising his or her rights established pursuant to
7 Chapter 12.75 (commencing with Section 7060) of Division 7 of
8 Title 1 of the Government Code.

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BILL ANALYSIS

SENATE RULES COMMITTEE		SB 1472
Office of Senate Floor Analyses		
1020 N Street, Suite 524		
(916) 651-1520	Fax: (916)	
327-4478		

 THIRD READING

Bill No: SB 1472
 Author: Pavley (D), et al.
 Amended: 4/11/12
 Vote: 21

SENATE TRANSPORTATION & HOUSING COMMITTEE : 9-0, 4/17/12
 AYES: DeSaulnier, Gaines, Harman, Kehoe, Lowenthal,
 Pavley, Rubio, Simitian, Wyland

SENATE JUDICIARY COMMITTEE : 5-0, 4/24/12
 AYES: Evans, Harman, Blakeslee, Corbett, Leno

SUBJECT : Maintenance of foreclosed properties

SOURCE : Attorney General Kamala Harris

DIGEST : This bill provides certain purchasers of foreclosed residential properties 60 days to remedy code violations before being subject to enforcement actions and eliminates the sunset on existing provisions requiring an owner of a foreclosed, vacant, residential property to maintain the property.

ANALYSIS : Under Section 17980 of the Health and Safety Code, a local government enforcement agency may issue a notice of violation to the owner of a residential property for the failure to comply with building codes or for the existence of a nuisance on the property. After giving the owner 30 day notice to abate the violation or nuisance, or a shorter period of time if deemed necessary to prevent or

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public or occupants of the structure, the enforcement agency may institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

These actions or proceedings may include civil fines, prosecution of the owner for a misdemeanor, and in the case of a property that meets the definition of a substandard building, court appointment of a receiver. If a court appoints a receiver, the receiver takes full and complete control of the property, collects rents, and pays all operating expenses. The receiver also hires contractors to remedy the code violations. For his/her services, the receiver is entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages. If the rents and other income from the property are insufficient to cover the costs of repair, the receiver may borrow funds and, with court approval, secure that debt and any unrecovered costs and fees of the receiver with a lien against the property.

A different section of law in the Civil Code, until January 1, 2013, requires the owner of a foreclosed, vacant, residential property to maintain the property. In this context, maintaining the property means caring for the exterior of the property, including, but not limited to, preventing excessive foliage growth that diminishes the value of surrounding properties, preventing trespassers or squatters from remaining on the property, preventing mosquito larvae from growing in standing water, and preventing other conditions that create a public nuisance. After giving the owner at least 30 days to remedy the violations, or less if conditions on the property threatens public health or safety, a governmental entity may impose a fine of up to \$1000 per day for a violation of these requirements. The governmental agency must allow for a hearing and the opportunity to contest any fine imposed. Current law directs these fine revenues to local nuisance abatement programs.

This bill:

1. With respect to code enforcement actions under Section

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17980 of the Health and Safety Code and except in the case of an immediate threat to the health and safety of the public or occupants, requires an enforcement agency to give a property owner 60 days, as opposed to the normal 30 days, to remedy a violation before commencing any action or proceeding if the property was foreclosed upon after January 1, 2008, the owner has purchased the property, and the owner is in the process of abating the violation.

2. Requires any entity releasing a lien securing a deed of

trust or mortgage on a property for which a code enforcement agency has recorded a notice of pending action to notify the enforcement agency within 30 days of releasing the lien.

3. Allows a receiver for substandard residential property to seek a court order ordering the property owner to pay all unrecovered costs associated with a receivership.
4. Deletes the sunset on the Civil Code provisions requiring an owner of a foreclosed, vacant, residential property to maintain the property.

Background

California leads the nation with one of the highest rates of foreclosures. According to RealtyTrac, in California, one in every 303 housing units received a foreclosure filing in March 2012, and 48,422 houses received a foreclosure notice in February alone. The San Diego CityBeat newspaper recently described the impact of blighted foreclosed properties on neighborhoods, noting:

. . . foreclosed, abandoned and neglected properties- largely clustered in San Diego's low-income neighborhoods-continue to be magnets for squatters, drug dealers, prostitutes and stray animals, reducing property values and potentially becoming public-health hazards. . . . [CityBeat's Kelly Davis'] piece led with the tale of Gabriela Castellanos, who had to close her home daycare business in Mountain View because parents were too concerned about the conditions and unseemly characters around nearby abandoned homes.

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Davis reported that a study by CPI [Center for Policy Initiatives] and ACCE [Alliance of Californians for Community Empowerment] found that an estimated 57,000 foreclosures in San Diego between 2008 and 2012 would cost the city upwards of \$134 million in police, fire and code-enforcement services and result in more than \$19 billion in lost property value. (San Diego CityBeat, "Fixing San Diego's foreclosure blight," April 11, 2012.)

Over the past few years, the California Legislature has passed legislation in an effort to respond to the ongoing foreclosure crisis. In 2008, the Legislature passed and the Governor signed SB 1137 (Perata, Corbett, Machado), Chapter 69, Statutes of 2008, an urgency measure intended to, among other things, encourage loan modifications in order to prevent avoidable foreclosures. SB 1137 also included provisions to empower local governments to protect residents from blight caused by foreclosed properties. Those provisions, which sunset January 1, 2013, require a legal owner to maintain vacant residential property, as

specified, and allow for the imposition of fines for the failure to maintain that property.

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

SUPPORT : (Verified 4/24/12)

Attorney General Kamala Harris (source)
California Bankers Association
California Chamber of Commerce
California Credit Union League
California Financial Services Association
California Independent Bankers
California Mortgage Association
California Mortgage Bankers Association
California Nurses Association
California Professional Firefighters
Public Counsel
United Trustees Association

ARGUMENTS IN SUPPORT : According to the author's office, blight remains a significant problem in communities

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throughout California as a result of the foreclosure crisis. A number of foreclosed properties are left vacant with stagnant swimming pools that spawn mosquitoes. Empty rooms lure squatters. Vandals, brown lawns, and overgrown vegetation are creating eyesores and fire hazards.

Neglected, foreclosed properties subject the neighborhood and municipality to drug crimes, prostitution, and vagrants living in the foreclosed properties, vandalism, and a host of other social ills. As foreclosed properties fall deeper into disrepair, the values of the surrounding homes and businesses also deteriorate alarmingly, further adding to the "foreclosure blight" and destruction of whole neighborhoods.

This bill seeks to address blight associated with foreclosures by providing an incentive to potential homebuyers, investors, or developers to purchase blighted properties by preventing code enforcement actions against the new purchaser for 60 days, provided repairs are being made to the property, and by making permanent the Civil Code tools that allow local agencies to combat blight with fines of up to \$1,000 per violation per day.

JJA:do 4/25/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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AMENDED IN SENATE APRIL 26, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1473

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

February 24, 2012

An act to amend Section 2924.8 of the Civil Code, and to amend ~~Section 1161b~~ *Sections 415.46 and 1161b* of the Code of Civil Procedure, relating to ~~foreclosures~~ *tenants*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1473, as amended, Hancock. ~~Foreclosure: tenants.~~ *Tenants: foreclosure and unlawful detainer.*

Existing

(1) *Existing* law requires a notice of sale to be posted before any power of sale can be exercised under the power of sale contained in any deed of trust or mortgage. Existing law, until January 1, 2013, requires a resident of property upon which a notice of sale has been posted to be provided a specified notice advising the resident that, among other things, if the person is renting the property, the new property owner may either give the tenant a new lease or rental agreement, or provide the tenant with a 60-day eviction notice, and that other laws may prohibit the eviction or provide the tenant with a longer notice before eviction. Existing law makes it an infraction to tear down the notice within 72 hours of posting. Existing law requires a state government entity to make translations of the notice available in 5 specified languages, for use by a mortgagee, trustee, beneficiary, or authorized agent, in order to satisfy the notice requirements.

This bill would revise certain portions of the notice to instead require a resident of property upon which a notice of sale has been posted to be advised that if the person is renting the property, the new property owner may either give the tenant a new lease or rental agreement, or provide the tenant with a 90-day eviction notice. The bill would require the notice to advise a tenant who has a lease that the new property owner is required to honor the lease *unless the new owner will occupy the property as a primary residence or unless the lease was signed within the last 15 days* and that the tenant may have the right to stay in the property for longer than 90 days. The bill would require the Department of Consumer Affairs to make translations of the notice available, as described above. *The bill would provide that these changes to the notice would become operative on March 1, 2013, or 60 days following the issuance of an amended notice translation by the Department of Consumer Affairs Internet Web site, whichever date is later.* The bill would extend the operation of these provisions indefinitely.

By extending the operation of provisions establishing a crime, this bill would impose a state-mandated local program.

(2) *Existing law provides that, in an unlawful detainer action, if an owner or owner's agent has obtained service of a prejudgment claim of right to possession, as specified, no occupant of the premises, whether or not that occupant is named in the judgment for possession, may object to the enforcement of the judgment, as specified.*

This bill would provide that those provisions do not limit the right of a tenant, subtenant, or occupant to file a prejudgment claim of right of possession or to object to enforcement of a judgment for possession, regardless of whether the tenant, subtenant, or occupant was served with a prejudgment claim of right to possession, as specified, in the case of an unlawful detainer arising out of, among other circumstances, a foreclosure sale.

Existing

(3) *Existing law, until January 1, 2013, requires a tenant or subtenant in possession of a rental housing unit at the time that property is sold in foreclosure to be provided 60 days' written notice to quit before the tenant or subtenant may be removed from the property, as specified.*

This bill would instead require a tenant or subtenant in possession of a rental housing unit under a month-to-month lease at the time that property is sold in foreclosure to be provided 90 days' written notice to quit before the tenant or subtenant may be removed from the property. The bill would provide tenants or subtenants holding possession under

a residential lease with the right to possession until the end of the lease term *unless the new owner will occupy the property as a primary residence or unless the lease was signed within the last 15 days. The bill would require a residential lease that is entered into 75 days or more after a notice of default against the property has been recorded to contain a notice to advise the potential tenant that the foreclosure process has begun on the property, and that the property may be sold, which will terminate the lease.* The bill would also extend the operation of these provisions indefinitely.

The

(4) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 2924.8 of the Civil Code is amended to
2 read:

3 2924.8. (a) Upon posting a notice of sale pursuant to Section
4 2924f, a trustee or authorized agent shall also post the following
5 notice, in the manner required for posting the notice of sale on the
6 property to be sold, and a mortgagee, trustee, beneficiary, or
7 authorized agent, concurrently with the mailing of the notice of
8 sale pursuant to Section 2924b, shall send by first-class mail in an
9 envelope addressed to the “Resident of property subject to
10 foreclosure sale” the following notice in English and the languages
11 described in Section 1632:

12

13 “Foreclosure

14 *Foreclosure process has begun on this property, which may*
15 *affect your right to continue to live in this property. Twenty days*
16 *or more after the date of this notice, this property may be sold at*
17 *foreclosure. If you are renting this property, the new property*
18 *owner may either give you a new lease or rental agreement or*
19 *provide you with a 90-day eviction notice. You may have a right*
20 *to stay in your home for longer than 90 days. If you have a lease,*

1 the new owner must honor the lease *unless the new owner will*
2 *occupy the property as a primary residence or unless the lease*
3 *was signed within the last 15 days. You may have the right to stay*
4 *in your home for longer than 90 days. Also, in some cases and in*
5 *some cities with a “just cause for eviction” law, you may not have*
6 *to move at all. You may wish to contact a lawyer or your local*
7 *legal aid office or housing counseling agency to discuss any rights*
8 *you may have.²² have.*

9
10 (b) It shall be an infraction to tear down the notice described in
11 subdivision (a) within 72 hours of posting. Violators shall be
12 subject to a fine of one hundred dollars (\$100).

13 (c) The Department of Consumer Affairs shall make available
14 translations of the notice described in subdivision (a) which may
15 be used by a mortgagee, trustee, beneficiary, or authorized agent
16 to satisfy the requirements of this section.

17 (d) This section shall only apply to loans secured by residential
18 real property, and if the billing address for the mortgage note is
19 different than the property address.

20 (e) *The amendments made to subdivision (a), by the act which*
21 *added this subdivision regarding the obligation to provide the*
22 *notice set forth in that subdivision in the languages required by*
23 *Section 1632 shall become operative on March 1, 2013, or 60 days*
24 *following the issuance of an amended notice translation by the*
25 *Department of Consumer Affairs, whichever occurs later.*

26 *SEC. 2. Section 415.46 of the Code of Civil Procedure is*
27 *amended to read:*

28 415.46. (a) In addition to the service of a summons and
29 complaint in an action for unlawful detainer upon a tenant and
30 subtenant, if any, as prescribed by this article, a prejudgment claim
31 of right to possession may also be served on any person who
32 appears to be or who may claim to have occupied the premises at
33 the time of the filing of the action. Service upon occupants shall
34 be made pursuant to subdivision (c) by serving a copy of a
35 prejudgment claim of right to possession, as specified in
36 subdivision (f), attached to a copy of the summons and complaint
37 at the same time service is made upon the tenant and subtenant, if
38 any.

1 (b) Service of the prejudgment claim of right to possession in
2 this manner shall be effected by a marshal, sheriff, or registered
3 process server.

4 (c) (1) When serving the summons and complaint upon a tenant
5 and subtenant, if any, the marshal, sheriff, or registered process
6 server shall make a reasonably diligent effort to ascertain whether
7 there are other adult occupants of the premises who are not named
8 in the summons and complaint by inquiring of the person or
9 persons who are being personally served, or any person of suitable
10 age and discretion who appears to reside upon the premises,
11 whether there are other occupants of the premises.

12 If

13 (2) If the identity of such an occupant is disclosed to the officer
14 or process server and the occupant is present at the premises, the
15 officer or process server shall serve that occupant with a copy of
16 the prejudgment claim of right to possession attached to a copy of
17 the summons and complaint. If personal service cannot be made
18 upon that occupant at that time, service may be effected by ~~(1)~~
19 leaving a copy of a prejudgment claim of right to possession
20 attached to a copy of the summons and complaint addressed to
21 that occupant with a person of suitable age and discretion at the
22 premises, ~~(2)~~ affixing the same so that it is not readily removable
23 in a conspicuous place on the premises in a manner most likely to
24 give actual notice to that occupant, and ~~(3)~~ sending the same
25 addressed to that occupant by first-class mail.

26 If

27 (3) In addition to the service on an identified occupant, or if no
28 occupant is disclosed to the officer or process server, or if
29 substituted service is made upon the tenant and subtenant, if any,
30 the officer or process server shall serve a prejudgment claim of
31 right to possession for all other persons who may claim to occupy
32 the premises at the time of the filing of the action by ~~(1)~~ leaving
33 a copy of a prejudgment claim of right to possession attached to
34 a copy of the summons and complaint at the premises at the same
35 time service is made upon the tenant and subtenant, if any, ~~(2)~~
36 affixing the same so that it is not readily removable in a
37 conspicuous place on the premises so that it is likely to give actual
38 notice to an occupant, and ~~(3)~~ sending the same addressed to “all
39 occupants in care of the named tenant” to the premises by first-class
40 mail.

1 The

2 (4) The person serving process shall state the date of service on
3 the prejudgment claim of right to possession form. However, the
4 absence of the date of service on the prejudgment claim of right
5 to possession does not invalidate the claim.

6 (d) Proof of service under this section shall be filed with the
7 court and shall include a statement that service was made pursuant
8 to this section. Service on occupants in accordance with this section
9 shall not alter or affect service upon the tenant or subtenant, if any.

10 (e) (1) If an owner or his or her agent has directed and obtained
11 service of a prejudgment claim of right to possession in accordance
12 with this section, no occupant of the premises, whether or not such
13 occupant is named in the judgment for possession, may object to
14 the enforcement of that judgment as prescribed in Section 1174.3.

15 (2) Paragraph (1) shall not limit the right of any tenant,
16 subtenant, or occupant of the property to file a prejudgment claim
17 of right of possession pursuant to Section 1174.25 at any time
18 before judgment, or to object to enforcement of a judgment for
19 possession as prescribed in Section 1174.3, whether or not the
20 tenant, subtenant, or occupant was served with a prejudgment
21 claim of right to possession, when the judgment for possession
22 arises from an action for unlawful detainer pursuant to Section
23 1161a.

24 (f) The prejudgment claim of right to possession shall be made
25 on the following form:

1

1.

1

1 ~~SEC. 2.~~

2 *SEC. 3.* Section 1161b of the Code of Civil Procedure is
3 amended to read:

4 1161b. (a) Notwithstanding Section 1161a, a tenant or
5 subtenant in possession of a rental housing unit under a
6 month-to-month lease at the time the property is sold in foreclosure
7 shall be given 90 days' written notice to quit pursuant to Section
8 1162 before the tenant or subtenant may be removed from the
9 property as prescribed in this chapter. ~~Tenants~~

10 (b) (1) *Tenants* or subtenants holding possession under a
11 residential lease of a rental housing unit at the time that the
12 property is sold at foreclosure shall have the right to possession
13 until the end of the lease term.

14 (2) *Paragraph (1) shall not apply if a new owner will occupy*
15 *the unit as a primary residence or if the lease was entered into*
16 *within 15 days prior to the posting of the notice of sale pursuant*
17 *to Section 2924f, provided, however, that in either case the new*
18 *owner shall provide the notice described in subdivision (a).*

19 (3) *Every residential lease entered into 75 days or more after*
20 *the recording of a notice of default for the property shall include*
21 *the following notice in English and the languages described in*
22 *Section 1632:*

23
24 *Foreclosure proceedings have begun on this property, which*
25 *may affect your right to continue to live in this property if you sign*
26 *this lease. This property may be sold at a foreclosure sale in as*
27 *soon as 20 days, which will terminate this lease. If you rent this*
28 *property, the new owner may evict you after a 90-day eviction*
29 *notice. In some cities with a "just cause for eviction" law, you*
30 *may not have to move.*

31
32 ~~(b)~~

33 (c) This section shall not apply if any party to the note remains
34 in the property as a tenant, subtenant, or occupant.

35 (d) *This section shall not preempt any local ordinance and is*
36 *in addition to any other rights and remedies available to tenants*
37 *and owners as provided by federal, state, and local law.*

38 ~~SEC. 3.~~

39 *SEC. 4.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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BILL ANALYSIS

SENATE RULES COMMITTEE	SB 1473
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

 THIRD READING

Bill No: SB 1473
 Author: Hancock (D), et al.
 Amended: 4/26/12
 Vote: 21

SENATE JUDICIARY COMMITTEE : 3-2, 4/17/12
 AYES: Evans, Corbett, Leno
 NOES: Harman, Blakeslee

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Residential tenancies: foreclosure

SOURCE : Attorney General Kamala Harris

DIGEST : This bill, which is part of the six-bill package sponsored by Attorney General Kamala Harris entitled the "California Homeowner Bill of Rights," is intended to provide additional protections to tenants living in foreclosed homes. This bill revises the 60-day notice to vacate and instead provides, in the case of a month-to-month lease, for 90 days' notice for these tenants. This bill also provides that new owners of a foreclosed property must honor a tenant's lease, except in certain cases, and unless the new owner will occupy the property as his/her primary residence. In that case, the new owner must give the tenant a 90-day notice to vacate. This bill revises the notice that is sent to tenants when the property is noticed for a foreclosure sale to reflect these changes and also deletes the January 1, 2013 sunset

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SB 1473
 Page

also permits a tenant in a foreclosed property to file a postjudgment claim of right to possession, as specified.

ANALYSIS : Existing state law provides that tenants living in a rental unit at the time the property is sold in foreclosure must be given 60-days' notice before they may be evicted. This provision, which does not apply if any party to the mortgage note remains in the property as a tenant, subtenant, or occupant, sunsets on January 1, 2013. (Code of Civil Procedure (CCP) Section 1161b)

Existing federal law requires a successor in interest in a property subject to foreclosure to provide a bona fide tenant in the property with a 90-day notice to vacate. The successor in interest must also honor the tenant's lease until the end of the lease term unless the property is sold to a purchaser who intends to occupy the home as his/her primary residence. In that case, the tenant must be provided with a 90-day notice to vacate (unless a longer period is required by state or local law). In addition, tenants of foreclosed properties must be provided with 90-days' notice to vacate if there is no lease or the lease is terminable at will. Federal law provides that a lease or tenancy shall be "bona fide" only if (1) the tenant is not the mortgagor or the child, spouse, or parent of the mortgagor; (2) the lease or tenancy is the result of an arms-length transaction; and (3) the rent for the lease or tenancy is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized by a federal, state, or local subsidy. These provisions sunset on December 31, 2014. ("Protecting Tenants at Foreclosure Act of 2009," Public Law 111-22)

This bill revises existing law's requirement of 60-days' notice to instead provide, in the case of a month-to-month lease, for 90-days' notice for these tenants.

This bill specifies that a tenant holding possession under a residential lease of a rental housing unit at the time the property is sold in foreclosure shall have the right to possession until the end of the lease term. This provision will not apply if the new owner will occupy the property as his/her primary residence or if the lease was entered into

within 15 days prior to the posting of the notice of sale. In either case, however, the new owner must give the tenant a 90-day notice to vacate.

This bill requires that a residential lease that is entered into after the expiration of 75 days following a notice of default must contain a notice in English and the languages described in Section 1632 that alerts the prospective tenant that the foreclosure process has started on the property and the property may be sold at foreclosure in as soon as 20 days, which will terminate the lease. The

notice also informs tenants that if they rent the property, the new owner may evict them after a 90-day eviction notice.

This bill also revises existing law's notice that is sent to tenants when a notice of sale is posted on the property to ensure that it accurately reflects the revisions proposed above. This bill provides that the changes in this notice will not become operative until March 1, 2013, or 60 days following the issuance of an amended new translation by the Department of Consumer Affairs, whichever occurs later.

This bill removes the January 1, 2013 sunset date that will otherwise apply to these sections.

Existing law provides that a former owner of a foreclosed property who holds over and remains in the property after it has been sold through foreclosure may be removed after a three-day notice to quit has been served. (CCP Section 1161a)

Existing law provides that if an owner uses a prejudgment claim of right of possession, no occupant of the premises, whether or not that person is named in the judgment for possession, may object to the enforcement of the judgment. (CCP Section 415.46)

This bill specifies that CCP Section 415.46 does not limit the right of a tenant to file a prejudgment claim of right of possession at any time before judgment or to object to enforcement of a judgment for possession whether or not the tenant was served with the claim of right to possession.

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Background

California leads the nation with one of the highest rates of foreclosure. According to RealtyTrac, in California, one in every 303 housing units received a foreclosure filing in March 2012, and 48,422 houses received a foreclosure notice in February alone. Tenants living in those homes have overwhelmingly been impacted. A November 18, 2007 New York Times article, "As Owners Feel Mortgage Pain, So Do Renters," noted "thousands of American families are losing their homes without ever missing a payment. They are renters in houses whose owners default on their mortgages - a large but little noticed class of casualties."

In January 2011, Tenants Together released its third annual report entitled "California Renters in the Foreclosure Crisis." The report estimated that at least 38 percent of homes in foreclosures were rentals and more than 200,000 California renters were directly affected by home foreclosures in 2010 alone. Tenants Together further

estimated that these numbers, based on data from Foreclosure Radar, likely undercount the number of foreclosed homes that are in fact rentals. The report indicated that the counties with the highest foreclosed rental units (5,000 or more) were Los Angeles, Riverside, Sacramento, and San Bernardino. In those counties, 45,860 renters were affected in Los Angeles; 18,823 in Riverside; 17,033 in Sacramento; and 17,356 in San Bernardino. In San Francisco, 61 percent of foreclosed units were renter occupied. The report listed other counties with comparatively high percentages of renter-occupied foreclosed units including: Alameda (40%); Fresno (42%); Humboldt (42%); Mono (41%); Napa (40%); and San Mateo (41%). (See "California Renters in the Foreclosure Crisis, Third Annual Report," January 2011, Tenants Together; <http://tenantstogether.org/>)

The impact of foreclosure on tenants has not gone unnoticed by policymakers, and recent state and federal laws have been enacted to provide tenants with additional time to move when the home in which they are living is the subject of a foreclosure. In 2008, the Legislature passed and the Governor signed SB 1137 (Perata, Corbett, Machado, Chapter

SB 1473
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69, Statutes of 2008), which requires that tenants receive 60-days' notice before they may be evicted after the rental unit in which they are living is foreclosed. These provisions sunset on January 1, 2013.

Federal lawmakers have also acted to protect tenants in foreclosure situations. On May 20, 2009, President Obama signed S. 896, Public Law 111-22, which included the "Protecting Tenants at Foreclosure Act of 2009" (PTFA). The PTFA generally requires a successor in interest in a property subject to foreclosure to provide bona fide tenants with a 90-day notice to vacate and, with limited exceptions, to honor the tenant's lease until the end of the lease term. In 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203), which extended the PTFA until December 31, 2014 and clarified that its protections extend to tenants who have entered into leases before the date on which complete title is transferred as the result of a foreclosure.

Comments

This bill makes the state law provisions similar to federal law by providing that a new owner of a foreclosed property must honor a tenant's lease. Under this bill, this provision will not apply if the new owner will occupy the property as his/her primary residence or if the lease was entered into within 15 days prior to the posting of the notice of sale. In either of those instances, the new owner must give the tenant a 90-day notice to vacate.

Tenant advocates raise concerns that, despite the protections envisioned by Congress under the PTFA, landlords have taken advantage of the ambiguity of the "bona fide" definition and have taken eviction action against tenants despite the fact that they arguably are entitled to additional time in the property. In many cases, tenants do not challenge these actions because they are unaware of their rights or they cannot afford legal representation.

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

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SUPPORT : (Verified 5/16/12)

Attorney General Kamala Harris (source)
California Nurses Association
Consumers Union
County of Santa Cruz

OPPOSITION : (Verified 5/16/12)

California Apartment Association
California Association of Realtors

ARGUMENTS IN SUPPORT : The bill's sponsor, Attorney General Kamala Harris, notes that "As more and more homes are sold through foreclosure, tenants increasingly face the specter of sudden dislocation of themselves, their families, and their belongings. Renters are usually the last to know of foreclosure, and many renters, including families with children, are ending up homeless due to foreclosure evictions ? ÝD]ue to inconsistency in state law, and between state and federal law, tenants are often confused, or misled, about their legal protections, and about how much time they have to move when served with a notice to vacate after a foreclosure sale.

Consumers Union writes that "Ýt]enants have been silent victims in the foreclosure crisis, often kept in the dark by their landlords and unsure as to who owns the property they live in. This bill will help ensure that innocent tenants receive adequate notice of the foreclosure status impacting their residences, and will protect tenants across the state from unjust eviction by new owners of foreclosed properties."

CTW:mw 5/16/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

AGENDA

CONFERENCE COMMITTEE ON SB 900 AND AB 278

CALIFORNIA'S FORECLOSURE CRISIS (OVERVIEW, PART 1)

MAY 10, 2012

**UPON ADJOURNMENT OF SENATE BUDGET & FISCAL REVIEW
SUBCOMMITTEE 4**

ROOM 4202

I. WELCOME & OPENING REMARKS

- Conference Committee Chairs and Members

II. FORECLOSURE CRISIS IN CALIFORNIA, THE NATIONAL MORTGAGE SETTLEMENT, AND THE HOMEOWNER BILL OF RIGHTS

- The Honorable Kamala Harris, California Attorney General
- Ben Diehl, Supervising Deputy Attorney General
- Amy Teng, Deputy Attorney General

III. SIGNATORY BANKS TO THE NATIONAL MORTGAGE SETTLEMENT

- Mike Kimball, Bank of America
- Kari Decker, JPMorgan Chase
- Mike Knudsen, Wells Fargo
- Jon Ross, Citigroup

IV. IMPACT OF FORECLOSURES IN THE COMMUNITY-- HOMEOWNERS AND HOUSING COUNSELORS

- Darryl Davis, San Francisco homeowner
- Ethan Hoff, Sacramento homeowner
- Sebastian and Teresa Oda, Los Angeles homeowners
- Lisa Sitkin, Housing and Economic Rights Advocates

V. ECONOMIC/ACADEMIC PERSPECTIVE

- Kurt Eggert, Professor of Law, Chapman University School Of Law
- Economist/Nicholas Campins, Deputy Attorney General
- Industry economist

VI. PUBLIC COMMENT

AGENDA

CONFERENCE COMMITTEE ON SB 900 AND AB 278

CALIFORNIA'S FORECLOSURE CRISIS (OVERVIEW, PART 2)

MAY 15, 2012

1:30 P.M.

ROOM TBA

I. COMMUNITY ADVOCATES/LABOR PERSPECTIVE

- Paul Leonard, Center for Responsible Lending
- Kevin Stein, California Reinvestment Coalition
- Norma Garcia, Consumers' Union
- Pedro Morillas, CALPIRG
- Caitlin Vega, California Labor Federation
- LaFonza Butler, SEIU
- Rosa Cabrera, PICO
- John Eller, ACCE
- Maria Elena Durazo, Los Angeles Labor Federation
- National Asian American Coalition
- NAACP
- National Council of La Raza
- Faith Leaders

II. BANKS/SERVICERS PERSPECTIVE

- Kevin Gould, California Bankers Association
- Jon Ross, California Mortgage Bankers Association
- Margaret Gladstein, California Independent Bankers
- Larisa Cespedes, HSBC
- Melissa Ameluxen, California Credit Union League
- Scott Govenar, California Financial Services Association

III. OTHER INDUSTRY PERSPECTIVES

- Mike Belote, United Trustees Association
- Craig Page, California Land Title Association
- Paul Gladfelty, Mortgage Electronic Registration Systems (MERS)
- Stan Wieg, California Association of Realtors
- Joanne Bettencourt, Securities Industry & Financial Markets Association
- Mike Arnold, California Mortgage Association
- Marti Fisher, California Chamber of Commerce

IV. PUBLIC COMMENT

AGENDA
CONFERENCE COMMITTEE ON AB 278 AND SB 900
CALIFORNIA'S FORECLOSURE CRISIS
(Loan Modification Programs)
MAY 24, 2012
12 p.m., ROOM 447

1) Opening Remarks

Chairs

Committee members

2) Loan Modifications: Past, Present and Future (15 min + 15 min Q&A)

Faith Schwartz, Executive Director, HOPE NOW Alliance

3) State Level Programs (15 min + 15 min Q&A)

Diane Richardson, Program Director- *Keep Your Home California*, California
Housing Finance Agency

4) Loan Modifications: A Counseling Perspective (15 min + 15 min Q&A)

Karen Metoyer, Clearpoint Credit Counseling Solutions

5) Public Comment

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-Specifes 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.

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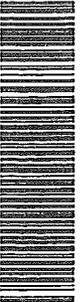
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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. ~~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.

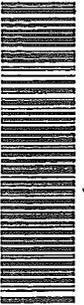
(vi) The expiration date of any interest-only period, if applicable.

(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.

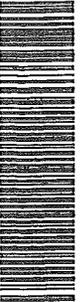
(e) For purposes of this section, a "borrower" shall include a mortgagor or trustor.

(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~~ 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:

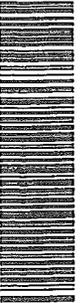
(1) The mortgagee, trustee, beneficiary, or authorized agent makes a determination that the borrower is not eligible for a loan modification.

(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:

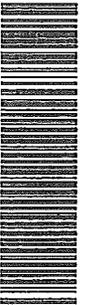
(1) Thirty days after the borrower is notified in writing of the denial.



(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.

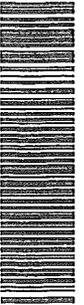
(B) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred.

(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.

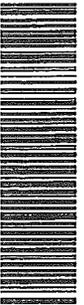


(4) Notwithstanding paragraph (3), the mortgagee, trustee, or other person authorized to take sale may ~~file~~ record a notice of sale pursuant to Section 2924f up to five days before the lapse of the three-month period described in paragraph (2), provided that the date of sale is no earlier than three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



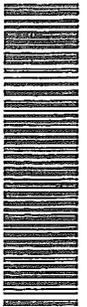
~~years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer 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:~~

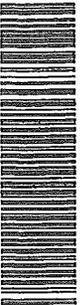
~~(2) Not less than three months shall elapse from the filing of the notice of default.~~

~~(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~~



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~~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.



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(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.

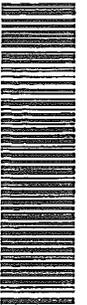
(b) When a borrower accepts an offered loan modification, the mortgagee, trustee, beneficiary, or authorized agent shall provide the borrower with a copy of the fully executed loan modification agreement following receipt of the executed copy from the borrower. If the modification was not made in writing,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

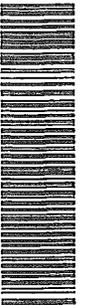
(g) The mortgagee, trustee, beneficiary, or authorized agent shall not collect any late fees for periods during which a complete loan modification is under consideration or a denial is being appealed, the borrower is making timely trial or permanent modification payments, or a short sale offer is being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

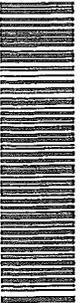
SEC. 12. Section 2924.16 is added to the Civil Code, to read:

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:



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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.



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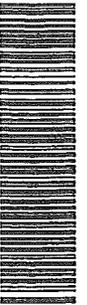
If the property under power of sale is in two or more counties, the public auction sale of all of the property under the power of sale may take place in any one of the counties where the property or a portion thereof is located.

(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.

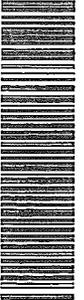
(d) The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for ~~sale~~. sale for any postponement that does not exceed nine days, otherwise, notice shall be pursuant to subdivision (a) of Section 2924. A public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

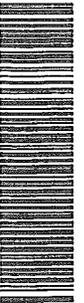


The bill would prohibit a notice of sale from being recorded under certain conditions, including, among others, if the borrower is in compliance with a loan modification plan, forbearance, or loan repayment plan, as specified, or if a short sale or deed-in-lieu of foreclosure has been approved, as specified. 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.

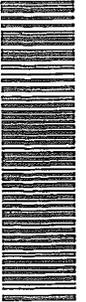
Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



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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:

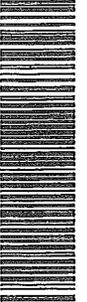
2923.7. (a) If a borrower is 60 or more days delinquent, the mortgage servicer shall inform the borrower that if the borrower wishes to pursue a loan modification or other foreclosure prevention alternative, the mortgage servicer shall establish a single point of contact (SPOC) for the borrower.

(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.



(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



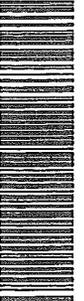
to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made 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.

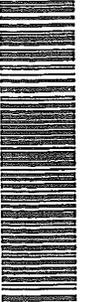
(2) Not less than three months shall elapse from the filing of the notice of default.

(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.~~

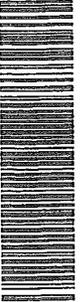
SEC. 4. Section 2924 of the Civil Code, as amended by Section 2 of Chapter 180 of the Statutes of 2010, is repealed.



~~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.~~

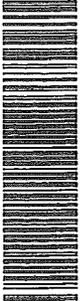
~~(D) If the default is curable pursuant to Section 2924e, the statement specified in paragraph (1) of subdivision (b) of Section 2924e.~~

~~(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.~~



~~(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.~~

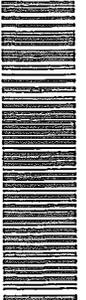
~~(d) All of the following shall constitute privileged communications pursuant to Section 47:~~

- ~~(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 2924.17 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.



LEGISLATIVE COUNSEL'S DIGEST

Bill No.

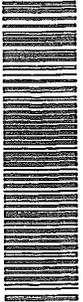
as introduced, _____.

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.

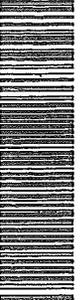


This bill would prohibit an entity from recording a notice of default or otherwise initiating foreclosure procedures unless the entity is the holder of the beneficial interest under the deed of trust, and would prohibit an entity acting as an agent from doing so without specific direction from the actual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



Keep Your Home California Programs

Keep Your Home California is a free service for homeowners who have suffered a financial hardship, to help them stay in their homes, maintain an affordable mortgage payment and avoid foreclosure.

The following are brief summaries of the programs offered under Keep Your Home California. See a list of participating servicers and which programs they are currently offering.



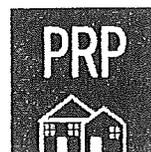
Unemployment Mortgage Assistance **For eligible unemployed homeowners.**

Mortgage assistance of up to \$3,000 per month for unemployed homeowners who are collecting unemployment benefits from the State of California's Employment Development Department (EDD).



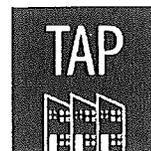
Mortgage Reinstatement Assistance Program **For eligible homeowners who have fallen behind on their mortgage payments.**

Funding of up to \$20,000 to help qualified homeowners catch up on their mortgage payments.



Principal Reduction Program **For eligible homeowners who owe more than their home is worth.**

Financial assistance to help pay down the principal balance of a mortgage loan and allow for a more affordable monthly payment.



Transition Assistance Program **For eligible homeowners who are undergoing a short sale or deed-in-lieu of foreclosure program.**

Financial help to make a smooth transition into stable and affordable housing.

KEEP YOUR HOME Income Limits

COUNTY	INCOME LIMIT
ALAMEDA	\$ 110,750
ALPINE	\$ 100,300
AMADOR	\$ 80,150
BUTTE	\$ 69,500
CALAVERAS	\$ 82,550
COLUSA	\$ 68,650
CONTRA COSTA	\$ 110,750
DEL NORTE	\$ 68,650
EL DORADO	\$ 90,100
FRESNO	\$ 68,650
GLENN	\$ 68,650
HUMBOLDT	\$ 68,650
IMPERIAL	\$ 68,650
INYO	\$ 77,500
KERN	\$ 68,650
KINGS	\$ 68,650
LAKE	\$ 68,650
LASSEN	\$ 73,100
LOS ANGELES	\$ 76,800
MADERA	\$ 68,650
MARIN	\$ 121,900
MARIPOSA	\$ 70,450
MENDOCINO	\$ 68,650
MERCED	\$ 68,650
MODOC	\$ 68,650
MONO	\$ 89,400
MONTEREY	\$ 81,350
NAPA	\$ 102,000
NEVADA	\$ 85,900

COUNTY	INCOME LIMIT
ORANGE	\$ 101,050
PLACER	\$ 90,100
PLUMAS	\$ 68,650
RIVERSIDE	\$ 75,000
SACRAMENTO	\$ 90,100
SAN BENITO	\$ 93,950
SAN BERNARDINO	\$ 75,000
SAN DIEGO	\$ 89,900
SAN FRANCISCO	\$ 121,900
SAN JOAQUIN	\$ 78,500
SAN LUIS OBISPO	\$ 89,300
SAN MATEO	\$ 121,900
SANTA BARBARA	\$ 86,750
SANTA CLARA	\$ 124,300
SANTA CRUZ	\$ 102,950
SHASTA	\$ 69,850
SIERRA	\$ 85,100
SISKIYOU	\$ 68,650
SOLANO	\$ 97,800
SONOMA	\$ 97,800
STANISLAUS	\$ 73,300
SUTTER	\$ 70,300
TEHAMA	\$ 68,650
TRINITY	\$ 68,650
TULARE	\$ 68,650
TUOLUMNE	\$ 78,950
VENTURA	\$ 105,700
YOLO	\$ 90,950
YUBA	\$ 70,300

Unemployment Mortgage Assistance

Summary Guidelines



<p>1. Program Overview</p>	<p>The Unemployment Mortgage Assistance Program (UMA) is one of CalHFA MAC's federally-funded programs developed to provide temporary financial assistance to eligible California homeowners who wish to remain in their homes but have suffered a loss of income due to unemployment.</p> <p>CalHFA MAC is partnering with financial institutions to directly provide program funds to subsidize an eligible homeowner's mortgage payments.</p> <p>UMA provides mortgage payment assistance equal to the lesser of \$3,000 per month or 100% of the PITI (principal, interest, tax, insurance) and any escrowed homeowner's association dues or assessments, for up to nine (9) months, with the purpose of preventing avoidable foreclosures until such time that the homeowner retains employment sufficient to meet the demands of satisfying their regular mortgage payment.</p>
<p>2. Program Goals</p>	<p>UMA's goal is to help homeowners remain in their homes and prevent avoidable foreclosures despite loss of income due to unemployment.</p> <p>The UMA program will minimize past due payments, and provide a homeowner with additional time to find alternate employment and replace income needed to make their mortgage payment.</p> <p>UMA was designed to assist homeowners who are currently eligible to receive unemployment benefits.</p> <p>UMA was designed to complement other loss mitigation programs, including increasing a homeowner's eligibility for an extended written forbearance plan and/or loan modification.</p>
<p>3. Target Population / Areas</p>	<p>UMA is designed to target low-to-moderate income homeowners and address the needs of a homeowner's specific situation in lieu of targeting certain regions or counties.</p>
<p>4. Program Allocation (Excluding Administrative Expenses)</p>	<p>\$874,995,915.28</p>

Unemployment Mortgage Assistance

Summary Guidelines



<p>5. Borrower Eligibility Criteria</p>	<ul style="list-style-type: none">• Homeowner must qualify as a low-to-moderate income household, as follows:<ul style="list-style-type: none">○ Low-to-moderate income of 120% or less of the HCD Area Median Income (as defined by the California State Department of Housing and Community Development), for a family of four, in the county where homeowner resides.○ A loan financed in whole or in part by bonds that are tax-exempt under IRC section 143, the homeowner is presumed to satisfy income limits.• Homeowner must complete and sign a Hardship Affidavit / 3rd Party Authorization to document the reason for the hardship.• Homeowners who have recently encountered a financial hardship due to underemployment or unemployment, including those whose unemployment hardship is related to their military service.• Homeowner's total monthly first lien mortgage payment PITI+escrowed A (principal, interest, taxes, insurance and escrowed association fees, as applicable) must exceed 31 percent of the homeowner's gross monthly household income, including unemployment benefits.• Homeowner must agree to provide all necessary documentation to satisfy program guidelines established by CalHFA MAC.• Homeowner must be currently approved to receive or receiving unemployment benefits.• Mortgage loan is delinquent or at risk of imminent default as substantiated by homeowner's hardship documentation.• Loans in foreclosure at the time of homeowner request for assistance are not eligible.• General program eligibility is determined by CalHFA MAC, the housing counselor or servicer based on information received from the homeowner. Program-specific eligibility is determined by CalHFA MAC on a first-come/first-approved basis until program funds and funding reserves have been exhausted. Loan servicer will implement the HHF program based on participation agreement terms and conditions.• Funding allocation will be tracked, monitored and performed by CalHFA MAC in a centralized processing operation.
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Unemployment Mortgage Assistance

Summary Guidelines



<p>6. Property / Loan Eligibility Criteria</p>	<ul style="list-style-type: none"> • Current unpaid principal balance (UPB) of the first lien mortgage loan is not greater than \$729,750 (GSE conforming limit for a one-unit property). • The property securing the mortgage loan must not be abandoned, vacant or condemned. • The applicant must own and occupy the single family, 1-4 unit home (an attached or detached house or a condominium unit) located in California and it must be their primary residence. Mobile homes are eligible if they are permanently affixed to the real property that is secured by the first lien.
<p>7. Program Exclusions</p>	<ul style="list-style-type: none"> • A Notice of Default (NOD) has been recorded on the subject property as of the date of request for assistance or at the time homeowner requested HAMP UP forbearance from their servicer. • Homeowner in an “active” bankruptcy is ineligible for program assistance consideration. However, CalHFA MAC will handle written requests for assistance received from a homeowner’s bankruptcy attorney or trustee on an exception basis. Final approval is subject to servicer participation in accordance with investor guidelines. Homeowners who have previously filed bankruptcy are eligible for consideration with proof of court order “Dismissal” or “Discharge”. • Loan is in foreclosure as evidenced by a recorded NOD. • Homeowner’s “hardship” is a result of voluntary resignation of employment. • Homeowner in an active HAMP trial modification is not eligible for UMA consideration unless the trial is cancelled. • Homeowner becomes re-employed at any time during the UMA benefit period. • The homeowner is no longer eligible for unemployment benefits from the California Employment Development Department (EDD) benefit.
<p>8. Structure of Assistance</p>	<p>CalHFA MAC will structure the assistance as a non-recourse, non-interest bearing subordinate loan in favor of the Eligible Entity (CalHFA MAC) secured by a junior lien recorded against the property in the amount of the total reduced PITI and any escrowed homeowner’s association dues or assessments, and equal to the total amount of HHF unemployment assistance. At the conclusion of (3) three years, the subordinate loan will be released. Loan funds will</p>

Unemployment Mortgage Assistance
 Summary Guidelines



	<p>only be repaid to Eligible Entity (CalHFA MAC) in the event of a sale or a refinance that includes cash out with sufficient net equity proceeds prior to forgiveness. Recovered funds will be recycled in order to provide additional program assistance until December 31, 2017, at which time any recovered funds will be returned to Treasury.</p> <p>After December 31, 2017, any remaining or returned funds will be returned to Treasury.</p>
9. Per Household Assistance	<p>Up to \$27,000 per household total (average funding of \$14,483.56), equaling the lesser of \$3,000 per month or 100% of PITI and any escrowed homeowner's association dues or assessments (and in all cases, subject to the HHF Program maximum benefit cap of \$50,000 with respect to monies previously received under other HHF Programs, if any).</p>
10. Duration of Assistance	<p>Homeowner participation in UMA is limited to nine (9) months maximum.</p>
11. Estimated Number of Participating Households	<p>Approximately 60,413. This figure is based on loans with unpaid principal balances ranging from \$200,000 to \$400,000 with an average funding of \$14,483.56.</p>
12. Program Inception / Duration	<p>The statewide launch of UMA was January 10, 2011 and it will continue up to five (5) years or until funding is fully reserved.</p>
13. Program Interactions with Other HFA Programs	<p>UMA will serve as a gateway to homeowner programs aimed at reinstatement and principal reduction as permitted by program guidelines.</p>
14. Program Interactions with HAMP	<p>This benefit may precede or extend HAMP, including HAMP UP for temporary unemployment assistance which when combined may provide assistance for more than one year. HAMP UP currently offers a minimum of twelve months forbearance for some homeowners.</p>

Unemployment Mortgage Assistance

Summary Guidelines



15. Program Leverage with Other Financial Resources	Upon completion of all UMA benefit assistance payments and based on homeowner need, the Servicer agrees to consider an extension of unemployment forbearance plan (such as HAMP UP or other Proprietary program) or other foreclosure prevention program as applicable per investor guidelines. CalHFA MAC will request that the loan servicer waive fees (e.g., NSF and late charges).
16. Qualify as an Unemployment Program	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Mortgage Reinstatement Assistance Program
Summary Guidelines



<p>1. Program Overview</p>	<p>The Mortgage Reinstatement Assistance Program (MRAP) is one of CalHFA MAC's federally-funded programs developed to provide temporary financial assistance to eligible homeowners who wish to remain in their homes but are in imminent danger of losing their home to foreclosure.</p> <p>MRAP provides funds to assist income-qualified homeowners to help them cure their delinquent first mortgage loan arrearages, which may also include payments needed to reinstate their loans from foreclosure.</p>
<p>2. Program Goals</p>	<p>The MRAP program will prevent avoidable foreclosures by helping homeowners reinstate their past due first mortgage loans.</p> <p>MRAP will also mitigate the need for large reinstatement dollars to be capitalized with remaining loan balance, and thus, broaden the population of homeowners who otherwise may not qualify for modification.</p>
<p>3. Target Population/ Areas</p>	<p>MRAP is designed to target low-to-moderate income homeowners and address the needs of a homeowner's specific situation in lieu of targeting certain regions or counties.</p>
<p>4. Program Allocation (Excluding Administrative Expenses)</p>	<p>\$159,400,000.00</p>
<p>5. Borrower Eligibility Criteria</p>	<ul style="list-style-type: none"> • Homeowner must qualify as a low-to-moderate income household, as follows: <ul style="list-style-type: none"> ○ Low-to-moderate income of 120% or less of the HCD Area Median Income (as defined by the California State Department of Housing and Community Development), for a family of four, in the county where homeowner resides. ○ A loan financed in whole or in part by bonds that are tax-exempt under IRC section 143, the homeowner is presumed to satisfy income limits.

Mortgage Reinstatement Assistance Program
 Summary Guidelines



	<ul style="list-style-type: none"> • Homeowner must complete and sign a Hardship Affidavit / 3rd Party Authorization to document the reason for the hardship. • Homeowners who have recently encountered a financial hardship due to their military service are eligible. • Homeowner has adequate income to sustain reinstated first lien mortgage loan per CalHFA MAC approved investor guidelines. • Homeowner must agree to provide all necessary documentation to satisfy program guidelines established by CalHFA MAC. • Mortgage loan is delinquent as substantiated by homeowner's hardship documentation. Loans in foreclosure are eligible. • If the reinstatement assistance is combined with a loan modification the homeowners modified monthly mortgage payment ratio must be reduced to 31% of the gross household income (excluding unemployment benefits) to meet the definition of an affordable payment. • On a case by case basis CalHFA MAC reserves the right to review and approve investor program guidelines that utilize affordable mortgage definitions greater than 31%. • General program eligibility is determined by CalHFA MAC, the housing counselor or servicer based on information received from the homeowner. Program-specific eligibility is determined by CalHFA MAC on a first-come/first-approved basis until program funds and funding reserves have been exhausted. Loan servicer will implement the HHF program based on participation agreement terms and conditions. • Funding allocation will be tracked, monitored and performed by CalHFA MAC in a centralized processing operation.
<p>6. Property / Loan Eligibility Criteria</p>	<ul style="list-style-type: none"> • Current unpaid principal balance (UPB) of the first lien mortgage loan is not greater than \$729,750 (GSE conforming limit for a one-unit property). • The property securing the mortgage loan must not be abandoned, vacant or condemned. • The applicant must own and occupy the single family, 1-4 unit home (an attached or detached house or a condominium unit) located in California and it must be their primary residence. Mobile homes are eligible if they are permanently affixed to the real property that is secured by the first lien.

Mortgage Reinstatement Assistance Program
Summary Guidelines



<p>7. Program Exclusions</p>	<ul style="list-style-type: none"> • Homeowner in an “active” bankruptcy is ineligible for KYHC program assistance consideration. Homeowners who have previously filed bankruptcy are eligible for consideration with proof of court order “Dismissal” or “Discharge”. • MRAP benefit assistance request for reinstatement with a first lien PITI and any escrowed homeowner’s association dues or assessments, payment of greater than 38% of the homeowner’s gross monthly household income, excluding unemployment benefits will be considered unaffordable and is excluded from MRAP reinstatement benefit assistance unless that assistance is combined with a loan modification. • Loan is less than two (2) payments past due as of the date of request for assistance.
<p>8. Structure of Assistance</p>	<p>CalHFA MAC will structure the assistance as a non-recourse, non-interest bearing subordinate loan in favor of the Eligible Entity (CalHFA MAC) secured by a junior lien recorded against the property in the amount of the HHF assistance. At the conclusion of (3) three years, the subordinate loan will be released. Loan funds will only be repaid to Eligible Entity (CalHFA MAC) in the event of a sale or a refinance that includes cash out with sufficient net equity proceeds prior to forgiveness. Recovered funds will be recycled in order to provide additional program assistance until December 31, 2017, at which time any recovered funds will be returned to Treasury.</p> <p>After December 31, 2017, any remaining or returned funds will be returned to Treasury.</p>
<p>9. Per Household Assistance</p>	<p>Up to \$25,000 per household (average funding of \$18,052.46) for PITI and any escrowed homeowner’s association dues or assessments, arrearages (and in all cases, subject to the HHF Program maximum benefit cap of \$50,000 with respect to monies previously received under other HHF Programs, if any).</p>
<p>10. Duration of Assistance</p>	<p>Available on a one-time only basis, per household.</p>

Mortgage Reinstatement Assistance Program
 Summary Guidelines



11. Estimated Number of Participating Households	Approximately 8,830. This figure is based on loans with unpaid principal balances ranging from \$200,000 to \$400,000 with an average funding of \$18,052.46.
12. Program Inception/ Duration	The statewide launch of MRAP was February 7, 2011 and it will continue up to five (5) years or until funding is fully reserved.
13. Program Interactions with Other HFA Programs	MRAP will serve as a gateway to other loss mitigation programs including loan modification which may include principal reduction, including other HHF Programs and the Principal Reduction Program.
14. Program Interactions with HAMP	MRAP will serve as a gateway to HAMP which may include principal reduction of homeowner's mortgage.
15. Program Leverage with Other Financial Resources	CalHFA MAC will require that the servicer waive all accrued and unpaid late charges and NSF fees for all payments funded with MRAP benefits.
16. Qualify as an Unemployment Program	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Principal Reduction Program
Summary Guidelines



<p>1. Program Overview</p>	<p>The Principal Reduction Program (PRP) is one of CalHFA MAC's federally-funded programs developed with a goal to provide capital on a dollar-for-dollar matching basis with participating lenders to reduce over a three-year period the outstanding principal balances of qualifying properties with negative equity.</p> <p>PRP will provide monies to reduce the principal balance of the first mortgage loan for the purpose of establishing an appropriate level of debt for eligible homeowners with qualifying properties.</p>
<p>2. Program Goals</p>	<p>The PRP program will, in cooperation with participating lenders, leverage the HHF dollars by reducing the principal balances of underwater mortgages and provide an incentive for qualifying homeowners to remain in their homes during this period of steep declines in value.</p> <p>A reduction in principal through PRP can achieve desired income ratios and affordability for a homeowner on the existing mortgage loan or can be used in conjunction with a loan modification.</p>
<p>3. Target Population / Areas</p>	<p>PRP is designed to target low-to-moderate income homeowners and address the needs of a homeowner's specific situation in lieu of targeting certain regions or counties.</p>
<p>4. Program Allocation (Excluding Administrative Expenses)</p>	<p>\$772,197,793.52</p>
<p>5. Borrower Eligibility Criteria</p>	<ul style="list-style-type: none"> • Homeowner must qualify as a low-to-moderate income household, as follows: <ul style="list-style-type: none"> ○ Low-to-moderate income of 120% or less of the HCD Area Median Income (as defined by the California State Department of Housing and Community Development), for a family of four, in the county where homeowner resides. ○ A loan financed in whole or in part by bonds that are tax-exempt under IRC section 143, the homeowner is presumed to satisfy income limits.

Principal Reduction Program
Summary Guidelines



	<ul style="list-style-type: none">• Homeowner must complete and sign a Hardship Affidavit / 3rd Party Authorization to document the reason for the hardship.• Homeowners who have recently encountered a financial hardship due to their military service are eligible.• Homeowner has adequate income to sustain modified mortgage payments per CalHFA MAC approved investor guidelines.• Homeowner must agree to provide all necessary documentation to satisfy program guidelines established by CalHFA MAC.• Mortgage loan is delinquent or at risk of imminent default as substantiated by homeowner's hardship documentation. Loans in foreclosure are eligible.• The homeowners modified monthly mortgage payment ratio must be reduced to 31% of the gross household income (excluding unemployment benefits) to meet the definition of an affordable payment.• On a case-by-case basis, CalHFA MAC reserves the right to review and approve investor program guidelines that utilize affordable mortgage definitions greater than 31%.• General program eligibility is determined by CalHFA MAC, the housing counselor or servicer based on information received from the homeowner. Program-specific eligibility is determined by CalHFA MAC on a first-come/first-approved basis until program funds and funding reserves have been exhausted. Loan servicer will implement the HHF program based on participation agreement terms and conditions.• Funding allocation will be tracked, monitored and performed by CalHFA MAC in a centralized processing operation.
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Principal Reduction Program
Summary Guidelines



<p>6. Property / Loan Eligibility Criteria</p>	<ul style="list-style-type: none"> • Property is encumbered by a first lien mortgage loan that was originated on or before January 1, 2009. • Current unpaid principal balance (UPB) of the first lien mortgage loan is not greater than \$729,750 (GSE conforming limit for a one-unit property). • The property securing the mortgage loan must not be abandoned, vacant or condemned. • The applicant must own and occupy the single family, 1-4 unit home (an attached or detached house or a condominium unit) located in California and it must be their primary residence. Mobile homes are eligible if they are permanently affixed to the real property that is secured by the first lien.
<p>7. Program Exclusions</p>	<ul style="list-style-type: none"> • Homeowner in an “active” bankruptcy is ineligible for KYHC program assistance consideration. However, CalHFA MAC will handle written requests for assistance received from a homeowner’s bankruptcy attorney or trustee on an exception basis. Final approval is subject to servicer participation in accordance with investor guidelines. Homeowners who have previously filed bankruptcy are eligible for consideration with proof of court order “Dismissal” or “Discharge”. • Homeowner fails to satisfy lender underwriting guidelines. • LTV of 115% or less. • Homeowner’s total monthly first lien mortgage payment PITI+escrowed A (principal, interest, taxes, insurance and escrowed association fees, as applicable) does not exceed 31 percent of the homeowner’s gross monthly household income, excluding unemployment benefits. Unemployment benefits may not be used to qualify for PRP assistance.

Principal Reduction Program
Summary Guidelines



<p>8. Structure of Assistance</p>	<p>In the event that CalHFA MAC receives less than 100% match by the lender/servicer, CalHFA MAC will structure the assistance as a non-recourse, non-interest bearing subordinate loan in favor of the Eligible Entity (CalHFA MAC) secured by a junior lien recorded against the property in the amount of the HHF assistance. At the conclusion of (3) three years, the subordinate loan will be released. Loan funds will only be repaid to Eligible Entity (CalHFA MAC) in the event of a sale or a refinance that includes cash out with sufficient net equity proceeds prior to forgiveness. Recovered funds will be recycled in order to provide additional program assistance until December 31, 2017, at which time any recovered funds will be returned to Treasury.</p> <p>If the lender/servicer matches the assistance in an amount equal to or greater than 100% of the HHF Program assistance provided to the homeowner, then the assistance is not required to be structured as a loan to the homeowner.</p> <p>After December 31, 2017, any remaining or returned funds will be returned to Treasury.</p>
<p>9. Per Household Assistance</p>	<p>Up to \$50,000 per household (average funding of \$47,446.53), less program monies previously received under other HHF Programs.</p>
<p>10. Duration of Assistance</p>	<p>Available on a one-time only basis, per household.</p>
<p>11. Estimated Number of Participating Households</p>	<p>Approximately 16,275. This figure is based on loans with unpaid principal balances ranging from \$200,000 to \$400,000 with an average funding of \$47,446.53.</p>
<p>12. Program Inception / Duration</p>	<p>The statewide launch of PRP was February 7, 2011 and it will continue up to three (3) years or until funding is fully reserved.</p>

Principal Reduction Program
Summary Guidelines



<p>13. Program Interactions with Other HFA Programs</p>	<p>PRP may be used in conjunction with MRAP aimed at reinstatement.</p>
<p>14. Program Interactions with HAMP</p>	<p>PRP may work in conjunction with a standard HAMP modification to help eligible homeowners achieve desired income ratios and affordability. PRP may also be combined or used in conjunction with the HAMP Principal Reduction Alternative (PRA). PRP funds are not eligible in any combination to qualify for HAMP PRA investor incentive compensation.</p>
<p>15. Program Leverage with Other Financial Resources</p>	<p>The goal of the program is for the applicable servicer/lender to match PRP funds on a dollar-for-dollar basis. The servicer/lender's matching funds will be paid no later than at the time of CalHFA MAC program funding.</p> <p>CalHFA MAC will require that the servicer waive all accrued and unpaid late charges and NSF fees at the time the modification agreement is completed</p>
<p>16. Qualify as an Unemployment Program</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>

Transition Assistance Program

Summary Guidelines



1. Program Overview	<p>The Transition Assistance Program (TAP) is one of CalHFA MAC's federally-funded programs developed to provide eligible homeowners with transition assistance when it is determined that they can no longer afford their home.</p> <p>TAP will be used in conjunction with short sale and deed-in-lieu programs to help homeowners make a smooth transition to housing. Homeowners will be required to occupy and maintain the property until the home is sold or returned to the lender as negotiated.</p> <p>Program funds would be available on a one-time only basis up to \$5,000 per household and can be used or layered with other CalHFA MAC HHF Programs. Funds will be sent to the servicer or homeowner after or in connection with the short sale or deed-in-lieu of foreclosure closing. Funds are intended to help the homeowner secure new housing (e.g., rent, moving expenses, and security deposits) and will be available for transition assistance counseling services.</p>
2. Program Goals	CalHFA MAC envisions that these monies would be used to complement other federal or lender programs designed specifically to stabilize communities by providing assistance to homeowners who have suffered a financial hardship and as a result are no longer financially able to afford their mortgage payments.
3. Target Population / Areas	TAP is designed to target low-to-moderate income homeowners and address the needs of a homeowner's specific situation in lieu of targeting certain regions or counties.
4. Program Allocation (Excluding Administrative Expenses)	\$2,300,000.00

Transition Assistance Program
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<p>5. Borrower Eligibility Criteria</p>	<ul style="list-style-type: none">• Homeowner must qualify as a low-to-moderate income household, as follows:<ul style="list-style-type: none">○ Low-to-moderate income of 120% or less of the HCD Area Median Income (as defined by the California State Department of Housing and Community Development), for a family of four, in the county where homeowner resides.○ A loan financed in whole or in part by bonds that are tax-exempt under IRC section 143, the homeowner is presumed to satisfy income limits.• Homeowner must complete and sign a Hardship Affidavit / 3rd Party Authorization to document the reason for the hardship.• Homeowners who have recently encountered a financial hardship due to their military service are eligible.• Homeowner must agree to provide all necessary documentation to satisfy program guidelines established by CalHFA MAC.• Mortgage loan is delinquent or at risk of imminent default as substantiated by homeowner's hardship documentation. Loans in foreclosure are eligible.• General program eligibility is determined by CalHFA MAC, the housing counselor or servicer based on information received from the homeowner. Program-specific eligibility is determined by CalHFA MAC on a first-come/first-approved basis until program funds and funding reserves have been exhausted. Loan servicer will implement the HHF program based on participation agreement terms and conditions.• Funding allocation will be tracked, monitored and performed by CalHFA MAC in a centralized processing operation.
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Transition Assistance Program
Summary Guidelines



<p>6. Property / Loan Eligibility Criteria</p>	<ul style="list-style-type: none"> • Current unpaid principal balance (UPB) of the first lien mortgage loan is not greater than \$729,750 (GSE conforming limit for a one-unit property). • The property securing the mortgage loan must not be abandoned, vacant or condemned. • The applicant must own and occupy the single family, 1-4 unit home (an attached or detached house or a condominium unit) located in California and it must be their primary residence. Mobile homes are eligible if they are permanently affixed to the real property that is secured by the first lien.
<p>7. Program Exclusions</p>	<ul style="list-style-type: none"> • Homeowner in an “active” bankruptcy is ineligible for KYHC program assistance consideration. However, CalHFA MAC will handle written requests for assistance received from a homeowner’s bankruptcy attorney or trustee on an exception basis. Final approval is subject to servicer participation in accordance with investor guidelines. Homeowners who have previously filed bankruptcy are eligible for consideration with proof of court order “Dismissal” or “Discharge”.
<p>8. Structure of Assistance</p>	<p>TAP assistance will not be structured as a loan.</p> <p>After December 31, 2017, any remaining or returned funds will be returned to Treasury.</p>
<p>9. Per Household Assistance</p>	<p>Up to \$5,000 per household (average funding of \$5,000.00).</p>
<p>10. Duration of Assistance</p>	<p>Available on a one-time only basis, per household.</p>
<p>11. Estimated Number of Participating Households</p>	<p>Approximately 460 This figure is based on loans with unpaid principal balances ranging from \$200,000 to \$400,000 with an average funding of \$5,000.00.</p>
<p>12. Program Inception / Duration</p>	<p>The statewide launch of TAP was February 7, 2011 and it will continue up to five (5) years or until funding is fully reserved.</p>

Transition Assistance Program
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13. Program Leverage with Other HFA Programs	TAP benefits may be available to the homeowner even if UMA, MRAP and/or PRP benefits have been utilized, subject to the HHF Program maximum benefit cap of \$50,000.
14. Program Interactions with HAMP	TAP complements HAMP and HAFA. The funds will leverage monies being made available through HAFA. Servicer is required to follow HAFA guidelines for allowable costs. In cases where the Servicer has approved the homeowner for a HAFA transaction, TAP dollars will be limited to \$2,000 in order to maintain the \$5,000 HHF Program maximum per household.
15. Program Leverage with Other Financial Resources	None.
16. Qualify as an Unemployment Program	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

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The Making Home Affordable Program (MHA) ® is a critical part of the Obama Administration's broad strategy to help homeowners avoid foreclosure, stabilize the country's housing market, and improve the nation's economy.

"Once you show them that you're trying they're going to help you but you have to try first. And they will help."

Kenny - Homeow

Homeowners can lower their monthly mortgage payments and get into more stable loans at today's low rates. And for those homeowners for whom homeownership is no longer affordable or desirable, the program can provide a way out that avoids foreclosure. Additionally, there are options for unemployed homeowners and homeowners who owe more than their homes are worth.

Lower Monthly Payments ›

Lower your mortgage payments with an MHA ® loan modification.

Lower Interest Rates ›

Take advantage of today's historically low mortgage interest rates through MHA ® refinance programs that help you get into more affordable and more stable fixed-rate mortgages.

If You Are Unemployed ›

Get the financial relief you need, even if you are unemployed.

If You Have a Second Mortgage ›

Learn about an MHA ® program designed for those with a home equity loan, HELOC, or other second lien that makes it difficult to keep up with mortgage payments.

If Your Home's Value Has Fallen ›

Find out what to do if the value of your home has fallen below what you owe on it, through an MHA ® program that specifically address this issue.

Leave Your Home & Avoid Foreclosure ›

If homeownership is no longer affordable or desirable, you may be able to transition out of your home and avoid foreclosure through an MHA ® program that also provides \$3,000 in relocation assistance.

View All Programs ›

Take a quick look at all of the MHA ® programs and see which one might be right for you.

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Lower Your Payments

Through MHA mortgage modifications, homeowners have been able to obtain lower mortgage payments and realize significant savings each month. For homeowners who have seen their home values drop, there are other options that can provide relief. Learn more about these MHA programs:

"Don't ignore it...get the help you need, get the advice you need. It's the best thing I can suggest, just having somebody to talk to."

Allan - Homeowner

Home Affordable Modification Program (HAMP) »

If you're *not* unemployed, but you're still struggling to make your mortgage payments, you may be eligible for the Home Affordable Modification Program (HAMP).

Principal Reduction Alternative (PRA) »

If your home is currently worth significantly less than you owe on it, you may be eligible for MHA's Principal Reduction Alternative (PRA).

Second Lien Modification Program (2MP) »

If your first mortgage was permanently modified under HAMPSM and you have a second mortgage on the same property, you may be eligible for a modification or principal reduction on your second mortgage as well.

FHA Home Affordable Modification Program (FHA-HAMP) »

If you have a loan that is insured or guaranteed by the Federal Housing Administration (FHA), you may be eligible for a program through that government agency.

USDA's Special Loan Servicing »

If you have a loan that is guaranteed by the United States Department of Agriculture's (USDA) Section 502 Single Family Housing Guaranteed Loan Program, you may be eligible for a program through that government agency.

Veteran's Affairs Home Affordable Modification (VA-HAMP) »

If you have a loan that is insured or guaranteed by the Department of Veterans Affairs (VA), you may be eligible for a program through that government agency.

Key Terms on This Page:

Mortgage Modification, Principal Reduction, Second Mortgage, Verified Monthly Gross (pre-tax) Income

Last Updated: 12/29/2011 10:24 AM

Help is a Phone Call Away

888-995-HOPE (4673)

Hearing impaired: 877-304-9709 TTY

As you enter a process that can sometimes be overwhelming, it would be in your best interest to engage a housing expert to help you along the way. Let a HUD-approved housing counselor help you understand your options, prepare your application, and work with your mortgage company.

Homeowner's HOPE™ Hotline

Hear it from Homeowners



Curtis and Darlene of Chicago, IL. Curtis and Darlene had lived in their home for 35 years when Curtis lost his job. That's when MHA helped them cut their mortgage payments in half.

See their story (PSA)

Beware of Scams

Unfortunately, and far too often, homeowners looking for mortgage help end up victimized by scam artists. Know the warning signs to protect yourself, your money, and your home.

Get tips to avoid scams.

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Get Help if Unemployed

MHA has programs designed to provide assistance to unemployed homeowners struggling to keep up with their payments. Learn more about these MHA and related programs.

"The earlier we get to you, the more options we have available."

Roy - Housing Counse

Home Affordable Unemployment Program (UP) »

Through MHA's Home Affordable Unemployment Program (UP), depending on your situation, your mortgage payments may be reduced to 31 percent of your income or suspended altogether for 12 months or more.

Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets (HHF) »

The U.S. Treasury's Hardest Hit Fund provides more than \$7.6 billion in aid for homeowners in states hit hardest by the economic crisis.

Key Terms on This Page:

Second Lien

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If You Have a Second Mortgage

If you have a home equity loan, HELOC, or some other second lien that is making it difficult for you to keep up with your mortgage payments, learn more about this MHA program.

"I sought out help before I became delinquent. There is help out there. You would be negligent if you didn't reach out for help."

Dixie - Homeowner

Second Lien Modification Program (2MP) »

If your first mortgage was permanently modified under HAMPSM and you have a second mortgage on the same property, you may be eligible for a modification or principal reduction on your second mortgage as well.

Key Terms on This Page:

Home Equity Loan, HELOC (Home Equity Line of Credit), Second Lien

Last Updated: 1/6/2012 4:48 PM

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See their story (PSA)

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Get Help With Fallen Home Value

If your home's value has fallen in recent years, MHA has programs designed to help bring what you owe and what you pay on your home more in line with its new valuation.

"Even when things are looking dire, you still want to get the best possible outcome from your situation. Because therefore your future will be easier to handle. easier to integrate into and transition into."

Ryan - Housing Counselor

Home Affordable Refinance Program (HARP) >

If you're *not* behind on your mortgage payments but you have been unable to get traditional refinancing because the value of your home has declined, you may be eligible to refinance through HARP.

FHA Refinance for Borrowers in Negative Equity (FHA Short Refinance) >

If you're *not* behind on your mortgage payments but owe more than your home is worth, (and your loan is *not* insured or guaranteed by FHA), FHA Short Refinance may be an option that your mortgage servicer will consider.

Treasury/FHA Second Lien Program (FHA2LP) >

If you have a second mortgage and your first mortgage servicer agrees to participate in FHA Short Refinance, you may be eligible to have your second mortgage on the same home reduced.

Principal Reduction AlternativeSM (PRA) >

If your home is currently worth significantly less than you owe on it, MHA's Principal Reduction Alternative (PRA) was designed to help you.

Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets (HHF) >

The U.S. Treasury Department provides more than \$7.6 billion in aid for homeowners in states hit hardest by the economic crisis.

Key Terms on This Page:

Refinance, Second Mortgage, Principal Reduction

Last Updated: 4/2/2012 9:57 AM

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888-995-HOPE (4673)

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As you enter a process that can sometimes be overwhelming, it would be in your best interest to engage a housing expert to help you along the way. Let a HUD-approved housing counselor help you understand your options, prepare your application, and work with your mortgage company.

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See their story (PSA)

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Exit Gracefully

If the cost of homeownership has become too much to bear, the MHA **Home Affordable Foreclosure Alternatives Program (HAFA)** allows you to transition out your home and avoid foreclosure with \$3,000 in relocation assistance and peace of mind.

"In many cases, [a short sale] is a dignified exit strategy where the borrower can sell the home and avoid the negative impact of foreclosure on their credit report and return to a better financial position."

Jerry - Bank of America

Home Affordable Foreclosure Alternatives (HAFA) ›

If you can't afford your mortgage payment and it's time for you to transition to more affordable housing, this program is designed for you.

Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets (HHF) ›

The U.S. Treasury's **Hardest Hit Fund** provides more than \$7.6 billion in aid for homeowners in states hit hardest by the economic crisis.

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Home Affordable Modification Program (HAMP)

Home Affordable Modification Program (HAMP)

Principal Reduction Alternative (PRA)

If you're *not* unemployed, but you're still struggling to make your mortgage payments you may be eligible for the **Home Affordable Modification Program (HAMP)**. HAM can lower your monthly mortgage payment to 31 percent of your verified monthly gross (pre-tax) income, which usually provides savings of hundreds of dollars per month.

Second Lien Modification Program (2MP)

Making Home Affordable is planning enhancements to the HAMP Program. Detailed information will be available for mortgage servicers in February 2012. The expanded program for homeowners is expected to be available at the earliest in June 2012. We will update this site as more details become available.

FHA Home Affordable Modification Program (FHA-HAMP)

Please refer to our homeowner Q&A document or call 888-995-HOPE (4673) to speak with a housing expert.

USDA's Special Loan Servicing

Veteran's Administration Home Affordable Modification (VA-HAMP)

+ Eligibility

You may be eligible for HAMP if you meet all of the following criteria:

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Leave Your Home & Avoid Foreclosure

- You occupy the house as your primary residence.
- You obtained your mortgage on or before January 1, 2009.
- You have a mortgage payment that is more than 31 percent of your monthly gross (pre-tax) income.
- You owe up to \$729,750 on your home.
- You have a financial hardship and are either delinquent or in danger of falling behind.
- You have sufficient, documented income to support the modified payment.
- You must not have been convicted within the last 10 years of felony larceny, theft, fraud or forgery, money laundering or tax evasion, in connection with a mortgage or real estate transaction.

Get more information on how to apply for a modification »

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**Eligibility criteria are for guidance only. Contact your mortgage company to see if you may be eligible for HAMP.*

+ Program Availability

Contact your mortgage servicer (the company to which you make your mortgage payments) to see if they participate in the program. Not all servicers do. If yours does not, they may offer their own foreclosure prevention solution that might be best suited to your situation.

If your mortgage servicer does participate in the MHA program but makes the determination that you are not eligible for a HAMP modification, they may offer you modification alternatives of their own.

Program ends December 31, 2013.

+ Steps to apply for a HAMP Modification

To apply for HAMP, you need to complete and provide the following to your HAMP participating mortgage servicer.

- Request for Mortgage Assistance Form
- IRS Form 4506T-EZ or 4506-T
- Verification of Income

If your mortgage is owned, insured, or guaranteed by Fannie Mae, Freddie Mac, FHA, VA or USDA, ask your mortgage servicer which solutions might be best suited to your situation.

+ More Information

If you have additional questions about getting mortgage help, contact one of our housing experts at **888-995-HOPE (4673)**. These HUD-approved housing counselors will help you understand your options, design a plan to suit your individual situation, and prepare your application. Research shows that homeowners who work with housing experts like these are more successful and have better long-term outcomes. There is no cost to you for this valuable around-the-clock service. Help is available in more than 160 languages.

If you qualify for HAMP and also have a second mortgage, you may also qualify for the **Second Lien Modification Program (2MP)**.

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Request a Home Affordable Modification

Start your application for the Home Affordable Modification ProgramSM (HAMPSM) by submitting a complete "Initial Package" to your servicer (the company to which you make your monthly mortgage payments). The Initial Package includes:

- Request for Mortgage Assistance Form
- Tax Form (Form 4506T-EZ) or (Form 4506-T)
- Verification of income

If you need help completing your paperwork, call the Homeowner's HOPETM Hotline at 1-888-995-HOPE (4673) to work with a HUD-approved housing counselor for free.

Step 1 – Complete the Request for Mortgage Assistance Form

The Request For Mortgage Assistance Form provides information to your mortgage servicer about your home and financial situation. After you have completed the form, print two copies—one for your records and one to send to your mortgage servicer. All of the borrowers on the mortgage must sign the Request For Mortgage Assistance Form. In accordance with the Dodd-Frank Wall Street and Consumer Protection Act, homeowners who apply for the Making Home Affordable Program are required to certify that they have not been convicted of any crimes associated with a mortgage or real estate transaction within the past ten years. The RMA Form includes this certification.

Step 2 - Complete the Tax Authorization (Form 4506T-EZ or 4506-T)

Borrowers who have filed their annual taxes on a Form 1040, should complete Tax Form 4506T-EZ. Form 4506T-EZ gives permission to your mortgage servicer to request a copy of the most recent tax return transcript you have filed with the Internal Revenue Service (IRS). Click here for instructions on completing the Form 4506T-EZ

All other borrowers, including those who have not been required to file taxes because their income may be below the threshold amount required to file taxes or their only source of income may be non-taxable income, should complete Tax Form 4506-T. If you did not file a tax return, Form 4506-T gives permission to your mortgage servicer to verify that you did not file a tax return with the Internal Revenue Service (IRS). Click here for instructions on completing the Form 4506-T

After you have completed the appropriate Tax Form for your case, print two copies—one for your records and one to send to your mortgage servicer. Only one taxpayer is required to sign the Tax Form.

Step 3 – Gather Proof of Income

Your mortgage servicer is required to verify your income to ensure that the modified mortgage payments will be affordable for you. The type of documentation you need to provide depends on the source of your income. The simple Proof of Income Checklist will tell you what documents you need to collect if you are a wage earner, self-employed, or receive retirement income. Be sure to make copies of your income documentation and keep the originals for your records.

Step 4 -- Send the Documents to Your Mortgage Servicer

After you complete, print, and sign the Request For Mortgage Assistance Form and Tax Form, send these documents, along with your proof of income, to your mortgage servicer. You will find the correct mailing address and fax number at Contact Your Mortgage Servicer.

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Home Affordable Refinance Program (HARP)

If you're not behind on your mortgage payments but have been unable to get traditional refinancing because the value of your home has declined, you may be eligible to refinance through MHA's Home Affordable Refinance Program (HARP). HARP is designed to help you get a new, more affordable, more stable mortgage. HARP refinance loans require a loan application and underwriting process, and refinance fees will apply.

+ Eligibility

You may be eligible for HARP if you meet all of the following criteria:

- The mortgage must be owned or guaranteed by Freddie Mac or Fannie Mae.
- The mortgage must have been sold to Fannie Mae or Freddie Mac on or before May 31, 2009.
- The mortgage cannot have been refinanced under HARP previously unless it is a Fannie Mae loan that was refinanced under HARP from March-May, 2009.
- The current loan-to-value (LTV) ratio must be greater than 80%.
- The borrower must be current on the mortgage at the time of the refinance, with a good payment history in the past 12 months.

**Eligibility criteria are for guidance only. Contact your mortgage servicer to see if you are eligible for HARP.*

+ Program Availability

Ask your mortgage servicer (the company to which you make your mortgage payments) if they participate in HARP. Not all mortgage servicers do. Contact Fannie Mae or Freddie Mac for help in determining if you may be eligible for HARP.

Program ends December 31, 2013.

+ Steps to HARP Refinance

- Determine whether your mortgage is owned or guaranteed by Fannie Mae or Freddie Mac by visiting their respective Loan Lookup Tools.
- Contact your current mortgage servicer or another that is approved by Fannie Mae or Freddie Mac to inquire about HARP.
- Compare rates and costs with additional mortgage companies to ensure best refinance terms.

+ For More Information

- Visit FannieMae.com or call (800)7Fannie.
- Visit FreddieMac.com, call (800)Freddie.
- If you have additional questions about getting mortgage help, contact one of our housing experts at 888-995-HOPE (4673). These HUD-approved housing counselors will help you understand your options, design a plan to suit your individual situation and prepare your application. Research shows that homeowners who work with housing experts like these are more successful and have better long-term

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Second Lien Modification Program (2MP)

If your first mortgage was permanently modified under HAMPSM and you have a second mortgage on the same property, you may be eligible for a modification or principal reduction on your second mortgage as well, through MHA's Second Lien Modification Program (2MP). 2MP works in tandem with HAMP to provide comprehensive solutions for homeowners with second mortgages to increase long-term affordability and sustainability. If the servicer of your second mortgage is participating, they can evaluate you for a second lien modification.

+ Eligibility

You may be eligible for 2MP if you meet all of the following criteria:

- Your first mortgage was modified under HAMP.
- You must not have been convicted within the last 10 years of felony larceny, theft, fraud or forgery, money laundering or tax evasion, in connection with a mortgage or real estate transaction.
- You have not missed three consecutive monthly payments on your HAMP modification.

**Eligibility criteria are for guidance only. Contact your mortgage servicer to see if you are eligible for 2MP.*

+ Program Availability

Servicers participating in 2MP are:

1. Bank of America, NA
2. Bayview Loan Servicing, LLC
3. CitiMortgage, Inc
4. Community Credit Union of Florida
5. GMAC Mortgage, LLC
6. Green Tree Servicing LLC
7. iServe Residential Lending, LLC
8. iServe Servicing, Inc.
9. J.P. Morgan Chase Bank, NA
10. Nationstar Mortgage LLC
11. OneWest Bank
12. PennyMac Loan Services, LLC
13. PNC Bank, National Association
14. PNC Mortgage
15. Residential Credit Solutions
16. ServisOne Inc., dbaBSI Financial Services, Inc.
17. Wells Fargo Bank, NA

Program ends December 31, 2013

+ For More Information

If you have additional questions about getting mortgage help, contact one of our housing experts at 888-995-HOPE (4673). These HUD-approved housing counselors will help you understand your options, design a plan to suit your individual situation, and prepare your application. Research shows that homeowners who work with housing experts like these are more successful

Help is a Phone Call Away

888-995-HOPE (4673)

Hearing impaired: 877-304-9709 TTY

As you enter a process that can sometimes be overwhelming, it would be in your best interest to engage a housing expert to help you along the way. Let a HUD-approved housing counselor help you understand your options, prepare your application, and work with your mortgage company.

Homeowner's HOPE™ Hotline

Hear it from Homeowners



Curtis and Darlene of Chicago, IL
Curtis and Darlene had lived in their home for 35 years when Curtis lost his job. That's when MHA helped them cut their mortgage payments in half.

See their story (PSA)

Beware of Scams

Unfortunately, and far too often, homeowners looking for mortgage help end up victimized by scam artists. Know the warning signs to protect yourself, your money, and your home.

Get tips to avoid scams.

 and have better long-term outcomes. There is no cost to you for this valuable, around-the-clock service. Help is available in more than 160 languages.

+ Videos

Key Terms on This Page:
Second Mortgage

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www.seiuca.org

May 7, 2012

Senator Noreen Evans
Co-Chair, Joint Conference Committee
State Capitol, Room 4032
Sacramento, CA 95814

Assemblyman Milke Eng, Co-Chair
Joint Conference Committee
State Capitol, Room 4016
Sacramento, CA 95814

RE: Homeowner Bill of Rights – SUPPORT

Dear Senator Evans and Assemblyman Eng:

The California State Council of the Service Employees International Union (SEIU) strongly supports the Attorney General's Homeowner Bill of Rights legislative package.

Like millions of middle-class families in California, our members continue to simultaneously express frustration with the practices of mortgage lenders regarding the loan modification process and desperation in their struggle to keep their homes.

Close to two million California families have already lost their homes while millions more are underwater, owing more to lenders than their homes are worth. The foreclosure free-fall has reduced the values of homes and eroded any sense of security that those homes once represented. This has devastated thousands of SEIU members – workers, taxpayers and families, who have seen their incomes severely reduced due to significant layoffs, furloughs and reductions in working hours as a result of ongoing fiscal constraints at the state and local government levels.

The subprime lending crisis caused a global economic downturn. While California continues to struggle to emerge from the recession, working families are burdened by the effects of mass foreclosures. This has had an exponential downward-spiral effect on employment and the budgets of cities, counties, and the state where a significant source of revenue, i.e., property taxes, has been eroded.

There is little doubt that it was Wall Street's demand for subprime mortgages that caused a wave of predatory lending on families across the country and to date, there has never been real accountability for the magnitude of this corporate malfeasance. These bills will prohibit and penalize the most egregious of them: robo-signing, foreclosures based on fraudulent documentation, and dual tracking – foreclosing on a mortgage loan while a family is in the midst of trying to modify that loan.

Because banks and servicers must have strong incentives to comply with the law, good rules without enforcement mechanisms will not protect California families from foreclosure. As such, SEIU contends that the package must include: 1) *Strong substantive protections to provide borrowers with fair consideration of alternatives to foreclosure.* At their core, this legislative package is designed to provide borrowers with a fair process to be considered for alternatives to foreclosure. 2) *Effective enforcement: A clear and "meaningful private right of action" to give borrowers their day in*

court, without exception.

It is important to note that this package will codify important provisions of the multi-state settlement, and confer certain rights and obligations upon both borrowers and lenders towards ensuring "fairness" in the lending and foreclosures process so that families are given a good faith opportunity to keep their homes.

Californians deserve to be protected from unfair servicing practices that lead to unnecessary foreclosures, and to have a meaningful opportunity to keep their homes. Furthermore, these legislative proposals will also serve as a catalyst toward helping the state overcome its ongoing fiscal challenges.

For these reasons, we respectfully urge your "AYE" vote when this legislative package comes before the Joint Conference Committee.

Sincerely,



Michael A. Bolden

Government Relations Advocate

cc: Honorable Members of the Joint Conference Committee
Honorable Mark Leno
Honorable Jerry Hill
Committee Consultants



April 9, 2012

TO: All Members, California State Legislature

FROM: California Bankers Association
 California Chamber of Commerce
 California Credit Union League
 California Financial Services Association
 California Independent Bankers
 California Mortgage Association
 California Mortgage Bankers Association
 Mortgage Electronic Registration Systems
 Securities Industry and Financial Markets Association
 United Trustees Association

RE: Observations on Pending Residential Mortgage Lending Legislation

The trade associations listed above wish to share initial observations regarding mortgage and foreclosure-related measures pending consideration in the Legislature. Once again, there are more than four dozen measures introduced this year focusing on various aspects of residential mortgage lending, loan servicing and foreclosure processes. In many cases, measures before the Legislature are duplicative, overlap, conflict, compete with others in amending similar or the same code sections or are cross-purposed.

We remain concerned with legislation that results in the further erosion of property taxes for local governments, perpetuates community blight for longer periods, acts as disincentives for capital investments and forestalls economic recovery. Should state laws with respect to loan origination and collateral recovery become too onerous, private capital will be reluctant to invest or will only invest at a significant risk-based premium, resulting in higher costs for consumers.

To the extent that home retention efforts fail, foreclosure is an unfortunate but necessary process. We agree that this process must be lawful, fair and respectful of the rights of borrowers, but at the same time, legal devices should not be used to unduly delay the inevitable when other options have been exhausted. As the legal and compliance risk involved in transactions

increases, inventory that ultimately could be sold to bona fide purchasers can remain in limbo under clouded titles, continuing to depress property values. Furthermore, as collateral recovery becomes less certain, investors in mortgage products will be less inclined to employ their investment capital in mortgage assets. This will have the effect of reducing the availability of credit, as lenders restrict their origination to higher credit quality borrowers (where foreclosure is deemed less likely) and investors demand higher returns on their investments, to compensate for increased risk.

Our trade associations, and the hundreds of members within, are proud of the dozens of measures that we have helped craft that have been signed into law during the past four years on this very topic. We reiterate our commitment to being part of this year's legislative conversation, as we have been for so many years. In that regard, we appreciate the initial meetings focused on the California Attorney General's (AG) 11-bill package and the time that interested parties have devoted to dissecting these proposals.

We preliminarily understood that certain measures within the AG legislative package were intended to codify elements of the national mortgage settlement and apply its requirements to all mortgage servicers. However, we have learned through our meetings that, in fact, proposed legislation exceeds and deviates from that settlement. Expanding an agreement that is barely a month old, has yet to be finally approved by the court, and making it permanent when it was intended to be temporary, is unsettling and has numerous consequences, including disjointed state efforts that were intended to be uniform in application.

Furthermore, the rush to codify without sufficient experiences to analyze the benefits and demerits of the settlement will lock a set of procedures inflexibly in statute. Even if adhered to precisely, it's unclear whether such an application to all mortgage servicers is wise policy. It has also become apparent that certain measures contain provisions purposefully overturning years of established case law.

The national settlement anticipated error rates and afforded a right to cure mistakes. Yet, measures within the AG legislative package impose strict liability with no right to cure and impose multiple, layered individual lawsuits with accompanying statutory, actual, treble and punitive damages. Exposing entities and individuals to excessive litigation risk will not attract and encourage creditors and investors to inject the capital necessary to revive California's residential housing marketplace.

As the economy in California and the nation is improving, the measures before the legislature must be carefully considered as they will directly influence our recovery and are likely to hinder emerging improvements in the housing sector. Well-intentioned efforts to help distressed borrowers may further restrict access to credit in the future. Advancing legislation that creates additional procedural hurdles or conflicting layers of bureaucracy for loan servicers, without addressing the borrower's underlying financial condition, may ultimately miss the mark of resolving core economic issues, and will ultimately prove unsuccessful at solving this complex problem.

Observations on Pending Residential Mortgage Lending Legislation

April 9, 2012

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Notwithstanding the foregoing, we will continue to seek reasonable solutions that provide meaningful consumer protections that avoid long-term damage to the marketplace, cause industry to exit residential mortgage lending and increase the cost of credit. The people of California require a full service home mortgage finance system that is accessible, affordable, transparent, prudent and effective, and the measures we refer to would not further the achievement of that goal.

Thank you.

cc: Anthony Williams, Policy Director, Senate President pro Tem Darrell Steinberg
Fredericka McGee, Legislative Counsel, Speaker John A. Perez