

AMENDED IN SENATE JANUARY 24, 2008

AMENDED IN SENATE JANUARY 18, 2008

AMENDED IN SENATE JANUARY 7, 2008

**SENATE BILL**

**No. 926**

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**Introduced by Senators Perata, Corbett, and Machado  
(Coauthors: Senators Cedillo, Migden, Romero, and Wiggins)**

February 23, 2007

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An act to add and repeal Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to add and repeal Section 1161b of the Code of Civil Procedure, relating to mortgages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 926, as amended, Perata. ~~Mortgages.~~ *Residential mortgage loans: foreclosure procedures.*

(1) Existing law requires every mortgage instrument to meet specified requirements. Existing law invalidates any change in interest provided for in any provision for a variable interest rate contained in a security document, as defined, or evidence of debt issued therewith, unless the provision is set forth in the security document or evidence of debt, the document or documents contain, among others, a statement notifying the borrower that the mortgage may provide for changes in interest, principal loan balance, payment, or loan terms, and, upon a change in interest rate, the borrower is mailed specified information on the base index and interest rate change.

Until January 1, 2013, this bill would require, commencing at 120, 90, and 45 days prior to any projected ~~change~~ *increase of at least 10%* in a residential mortgage payment amount *for a loan made on or before*

*December 31, 2007, that is for an owner-occupied residence, the mailing of specified information related to the interest rate change and payment due, in plain language at a specified reading level and in the language in which the mortgage was negotiated, as specified.*

(2) Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default, and to mail the notice of default to the mortgagor or trustor. Existing law requires the notice to contain specified statements, including, but not limited to, those related to the mortgagor's or trustor's legal rights, as specified.

Until January 1, 2013, *and as applied to residential mortgage loans made on or before December 31, 2007, that are for owner-occupied residences*, this bill would, among other things, require, prior to the filing of any notice of default, a mortgagee, trustee, servicer, or beneficiary to conduct an in-person or, at the borrower's option, telephonic meeting with the borrower, as defined, to assess the borrower's financial situation, provide the borrower with a list of HUD-certified credit counselors in the borrower's geographic area, and explore options for the borrower to avoid foreclosure. The bill would also require the mortgagee, trustee, servicer, or beneficiary to offer, if feasible, other nonforeclosure options, as specified. The bill would preclude the filing of a notice of default until 30 days after that meeting, and would, upon that filing, require the mortgagee, trustee, servicer, or beneficiary to include a specified declaration regarding the meeting and the offering of alternative terms and options, which, upon a willful misstatement of material fact, may subject that person to a specified civil penalty subject to a civil action by the attorney general, district attorney, county counsel, or city attorney. If a notice of default had already been filed prior to the enactment of this act, the bill would instead require, prior to the notice of sale, an in-person *or, at the borrower's option, telephonic* meeting between the above-described parties. *Upon filing a notice of sale, the aforementioned declaration requirements and penalty provisions would also apply thereto.* The bill would also set forth procedures by which the borrower would be contacted prior to those in-person meetings, defined as "due diligence" on the part of the mortgagee, trustee, servicer, or beneficiary, which would require and include preliminary contact by electronic mail, first class mail, telephone, and certified mail, as specified. The bill would

also require specified mailings to the resident of a property that is the subject of a notice of sale.

Until January 1, 2013, this bill would also set forth specified penalties of up to \$1,000 a day for the failure by a legal owner to maintain vacant foreclosed residential property purchased at a foreclosure sale, as specified, and subject to a 14-day abatement period.

(3) Existing law governs the termination of tenancies and generally requires 30 days' notice of the termination thereof, except under specified circumstances. Existing law also establishes the criteria for determining when a tenant is guilty of unlawful detainer.

Until January 1, 2013, this bill would give a tenant or subtenant in possession of a rental housing unit that has been sold due to foreclosure, 60 days to remove himself or herself from the property, as specified.

(4) This bill would set forth specified findings and declarations and intent provisions with regard to the above, and would provide that its provisions are severable.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:  
3 (a) California is facing an unprecedented threat to its state  
4 economy and local economies because of skyrocketing residential  
5 property foreclosure rates in California. Residential property  
6 foreclosures have increased almost 250 percent from September  
7 2006 to September 2007. More than 52,000 homes were lost to  
8 foreclosure in California in 2007, and another 172,000 households  
9 are in default and undergoing the foreclosure process. As many as  
10 foreclosures increased sevenfold from 2006 to 2007. In 2007, more  
11 than 84,375 homes were lost to foreclosure in California, and  
12 254,824 households went into default, the first step in the  
13 foreclosure process. As many as 400,000 subprime borrowers with  
14 over one hundred billion dollars (\$100,000,000,000) in mortgages,  
15 and hundreds of thousands of other residential property borrowers,  
16 could face foreclosure in the next five years.

1 (b) High foreclosure rates have adversely affected property  
2 values in California, and will have greater adverse consequences  
3 as foreclosures continue to rise. A recent United States Congress  
4 Joint Economic Committee report estimates that more than  
5 twenty-three billion six hundred million dollars (\$23,600,000,000)  
6 in property values will be lost over the next two years in California  
7 because of foreclosures.

8 (c) Over the next two years, it is estimated that California will  
9 lose nearly one hundred eleven million dollars (\$111,000,000) in  
10 tax revenues from forecasted foreclosures and the spillover effect  
11 on neighboring properties. More foreclosures mean less money  
12 for schools, public safety, and other key services.

13 (d) Under specified circumstances, mortgage lenders and  
14 servicers are authorized under their pooling and servicing  
15 agreements to modify mortgage loans when the modification  
16 maximizes the net present value of recoveries to the securitization  
17 trust and is in the best interest of investors; and that modification  
18 is in the best interest of investors when the borrower's ability and  
19 willingness to pay under the modified terms continues to produce  
20 revenue for the investor, whereas a default on the loan and  
21 foreclosure of the property causing significant financial loss to the  
22 investor is likely to occur without a restructuring or other  
23 modification of the loan.

24 (e) It is essential to the economic health of California for the  
25 state to ameliorate the deleterious effects on the state economy  
26 and local economies and the California housing market that will  
27 result from the continued foreclosures of residential properties in  
28 unprecedented numbers by modifying the foreclosure process to  
29 require mortgage lenders and servicers to contact their borrowers  
30 and explore mutually agreed upon options that could avoid  
31 foreclosure. These changes in the procedure for accessing the  
32 state's foreclosure process are essential to ensure that the process  
33 does not exacerbate the current crisis by adding more foreclosures  
34 to the glut of foreclosed properties already on the market where a  
35 foreclosure could have been avoided. Those additional foreclosures  
36 will further destabilize the housing market with significant,  
37 corresponding deleterious effects on the local and state economy.

38 (f) This act is necessary to avoid unnecessary foreclosures of  
39 residential properties and thereby provide stability to California's  
40 statewide and regional economies and housing market by requiring

1 early contact and communications between lenders and specified  
2 borrowers to improve the long-term affordability of those loans  
3 and by facilitating the modification or restructuring of loans that  
4 would likely default otherwise.

5 SEC. 2. Section 2923.5 is added to the Civil Code, to read:

6 2923.5. (a) Notwithstanding any other provision of law, 120,  
7 90, and 45 days prior to any projected ~~change~~ *increase of at least*  
8 *10 percent* in a borrower's mortgage payment amount, the  
9 mortgagee, trustee, servicer, or beneficiary shall mail notice to the  
10 borrower of all of the following:

11 (1) The current interest rate.

12 (2) The current monthly payment amount or the current periodic  
13 payment amount if the borrower is on a payment schedule other  
14 than monthly.

15 (3) The formula used by the mortgagee, trustee, servicer, or  
16 beneficiary to calculate the monthly or periodic payment amount,  
17 as provided in the borrower's mortgage loan contract. If the loan  
18 is an adjustable rate loan whose interest rate is calculated by adding  
19 a margin to the value of an index, the formula shall clearly identify  
20 the amount of the margin and the name of the index.

21 (4) The date on which the monthly or periodic payment amount  
22 is projected to change.

23 (5) A statement explaining that the mortgagee, trustee, servicer,  
24 or beneficiary will not know the modified interest rate or modified  
25 payment amount until at least 30 days prior to the projected date  
26 of change in payment amount.

27 (6) A statement explaining that the mortgagee, trustee, servicer,  
28 or beneficiary will notify the borrower about the actual change in  
29 payment amount at least 25 days prior to any change in payment  
30 amount.

31 (7) The difference between the borrower's current monthly or  
32 periodic payment and the illustrative monthly or periodic payment  
33 described in paragraph (8).

34 (8) An illustration of what the borrower's monthly or periodic  
35 payment amount and interest rate would be upon adjustment, if  
36 those amounts were calculated by the mortgagee, trustee, servicer,  
37 or beneficiary as of a date certain *using the formula as provided*  
38 *in the borrower's mortgage loan contract*. The date used by the  
39 mortgagee, trustee, servicer, or beneficiary shall not be any earlier  
40 than 30 days prior to the date the notice is sent. The illustration

1 shall be clearly denoted as such at the beginning of the example  
2 and set forth in no smaller than 12-point font. The date certain and  
3 the formula used to calculate the illustrative monthly or periodic  
4 payment amount and interest shall be specified in the notice. The  
5 illustration shall be accompanied by a statement that clearly states  
6 all of the following:

7 (A) The illustration is intended only as an aid to the borrower  
8 in evaluating whether he or she is likely to be able to afford the  
9 new monthly or periodic payment.

10 (B) The illustration is not an offer of credit terms.

11 (b) The notice described in subdivision (a) shall be provided by  
12 first-class mail and shall be in plain language ~~at a reading level no~~  
13 ~~higher than grade 6~~. The notice shall be provided in the language  
14 in which the mortgage was negotiated. If the mortgagee, trustee,  
15 servicer, or beneficiary is not the entity that originally negotiated  
16 the mortgage and does not know the language in which the  
17 mortgage was negotiated, the notice shall be provided in English  
18 and the languages described in Section 1632.

19 (c) This section shall only apply to loans secured by residential  
20 real property *made on or before December 31, 2007, that are for*  
21 *owner-occupied residences*.

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

25 SEC. 3. Section 2923.6 is added to the Civil Code, to read:

26 2923.6. (a) Prior to filing a notice of default pursuant to Section  
27 2924, the mortgagee, trustee, servicer, or beneficiary shall conduct  
28 an in-person meeting with the borrower to assess the borrower's  
29 financial situation, provide the borrower with a list of  
30 HUD-certified credit counselors in the borrower's geographic  
31 region, and explore options for the borrower to avoid foreclosure.  
32 At that meeting, the mortgagee, trustee, servicer, or beneficiary  
33 shall offer, where feasible, restructuring or other options, including  
34 forbearance or loan modification, consistent with the mortgagee's,  
35 trustee's, servicer's, or beneficiary's authority to mitigate losses,  
36 if that mitigation will serve the best interest of the investors because  
37 (1) the borrower is able and willing to pay under the modified  
38 terms, and (2) significant financial loss to the investors is likely  
39 to occur without a restructuring or other modification. Except as  
40 provided in subdivision (b), the mortgagee, trustee, servicer, or

1 beneficiary may not file a notice of default until 30 days after that  
2 in-person meeting.

3 (b) Upon filing a notice of default pursuant to Section 2924, a  
4 mortgagee, trustee, servicer, or beneficiary shall include a  
5 declaration that it has met with the borrower or tried with due  
6 diligence to contact the borrower for an in-person meeting. The  
7 mortgagee, trustee, servicer, or beneficiary shall also include within  
8 that declaration the terms of the existing loan and the restructuring  
9 options that were offered. If the mortgagee, trustee, servicer, or  
10 beneficiary willfully states as true any material fact he or she knows  
11 to be false, that person shall be subject to a civil penalty of up to  
12 ten thousand dollars (\$10,000). The attorney general, any district  
13 attorney, county counsel, or city attorney may bring a civil action  
14 to impose the penalty.

15 (c) (1) If a mortgagee, trustee, servicer, or beneficiary had  
16 already filed a notice of default prior to the enactment of this  
17 section, then the mortgagee, trustee, servicer, or beneficiary shall,  
18 prior to notice of the sale pursuant to Section 2924f, and with due  
19 diligence, contact the borrower and conduct an in-person meeting  
20 to assess the borrower's financial situation, provide the borrower  
21 with a list of HUD-certified credit counselors in the borrower's  
22 geographic area, and explore options for the borrower to avoid  
23 foreclosure. At that meeting, the mortgagee, trustee, servicer, or  
24 beneficiary shall offer, where feasible, restructuring or other  
25 options, including forbearance or loan modification, consistent  
26 with the mortgagee's, trustee's, servicer's, or beneficiary's  
27 authority to mitigate losses if that mitigation will serve the best  
28 interest of the investors because the borrower is able and willing  
29 to pay under the modified terms and significant financial loss to  
30 the investors is likely to occur without a restructuring or other  
31 modification.

32 (2) *Upon filing a notice of sale pursuant to Section 2924f, the*  
33 *mortgagee, trustee, servicer, or beneficiary described in paragraph*  
34 *(1) shall also comply with the declaration requirements of, and be*  
35 *subject to the penalties set forth in, subdivision (b).*

36 (d) All communications and negotiations pursuant to this section  
37 shall occur in the language in which the loan was originally  
38 negotiated. If the mortgagee, trustee, servicer, or beneficiary is not  
39 the entity that originally negotiated the terms and conditions of  
40 the loan and does not know the language used to negotiate the

1 loan, a notice shall be sent to the borrower in English and the  
2 languages described in Section 1632, stating the following: “Your  
3 home may be subject to foreclosure, which could result in you  
4 losing your home. Please contact us at (insert telephone number)  
5 to discuss possible options to avoid the foreclosure.”

6 (e) Any in-person meeting required pursuant to this section may  
7 instead, at the option of the borrower, occur telephonically.

8 (f) A mortgagee’s, trustee’s, servicer’s, or beneficiary’s loss  
9 mitigation personnel may participate by telephone at any in-person  
10 meeting required by this section.

11 (g) For purposes of this section, a “borrower” shall include a  
12 mortgagor or trustor.

13 (h) For purposes of this section, “due diligence” shall require  
14 and mean all of the following:

15 (1) A mortgagee, trustee, servicer, or beneficiary shall first  
16 contact a borrower by electronic mail and by sending a first-class  
17 letter. The first-class letter shall be sent to the address to which  
18 the property tax bill is sent and the electronic mail shall be sent to  
19 the electronic mail address on file if the mortgagee, trustee,  
20 servicer, or beneficiary has that *electronic mail* address.

21 (2) After the letter and electronic mail have been sent, the  
22 mortgagee, trustee, servicer, or beneficiary shall contact the  
23 borrower by telephone at least three times at different hours and  
24 on different days, including one call on a weekend. Telephone  
25 calls shall be made to the primary telephone number on file. This  
26 requirement is not necessary if a meeting has been arranged  
27 pursuant to the letter or electronic mail contact.

28 (3) If the borrower does not respond within two weeks after the  
29 last communication by the mortgagee, trustee, servicer, or  
30 beneficiary, and that party has met the electronic mail, first-class  
31 letter, and telephone call requirements, the mortgagee, trustee,  
32 servicer, or beneficiary shall then send a certified letter ~~with a~~  
33 ~~return receipt~~, *with return receipt requested*. The letter shall be  
34 sent to the address to which the property tax bill is sent. This  
35 requirement is not necessary if a meeting has been arranged  
36 pursuant to the letter, electronic mail, or telephone contact.

37 (4) If the borrower does not respond to the certified letter within  
38 30 days, the filing of a notice of default may commence.

39 (5) Written communications with the borrower shall include a  
40 notice providing that the borrower may wish to contact a

1 HUD-certified credit counselor to contact the mortgagee, trustee,  
2 servicer, or beneficiary on the borrower’s behalf.

3 (6) The mortgagee, trustee, servicer, or beneficiary shall provide  
4 a means for the borrower to contact it in a timely manner, including  
5 a toll-free telephone number that will be answered by a live person  
6 after no more than eight rings or a 24-hour toll-free telephone  
7 number that gives the borrower the option of reaching a live  
8 representative of the mortgagee, trustee, servicer, or beneficiary.

9 *(i) This section shall only apply to loans secured by residential*  
10 *real property made on or before December 31, 2007, that are for*  
11 *owner-occupied residences.*

12 ~~(i)~~

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

16 SEC. 4. Section 2924.8 is added to the Civil Code, to read:

17 2924.8. (a) Upon filing a notice of sale *pursuant to Section*  
18 *2924f*, a mortgagee, trustee, servicer, or beneficiary shall also mail,  
19 at the same time, a notice addressed to the “resident” of the  
20 property.

21 (b) The outside of the envelope shall prominently state in  
22 English and the languages described in Section 1632:  
23 “IMPORTANT: Information contained in this letter may affect  
24 your right to live in this property.”

25 (c) The notice shall state the following in the same languages  
26 required on the outside of the envelope: “Foreclosure process has  
27 begun on this property, which may affect your right to continue  
28 to live in this property. Twenty days or more after the date of this  
29 notice, this property may be sold at foreclosure. The new property  
30 owner may either give you a new lease or provide you with a  
31 60-day eviction notice. However, other laws may prohibit an  
32 eviction in this circumstance or provide you with a longer notice  
33 before eviction. You may wish to contact a lawyer or your local  
34 legal aid or credit counseling organization to discuss any rights  
35 you may have.”

36 *(d) This section shall only apply to loans secured by residential*  
37 *real property.*

38 ~~(d)~~

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

4 SEC. 5. Section 2929.3 is added to the Civil Code, to read:

5 2929.3. (a) Failure by a legal owner to maintain a vacant  
6 ~~foreclosed property~~ residential property purchased by that owner  
7 at a foreclosure sale shall constitute a nuisance and a violator shall  
8 be subject to civil fines and penalties of up to one thousand dollars  
9 (\$1,000) per day. *If an entity chooses to assess fines and penalties*  
10 *pursuant to this section, that entity shall send the legal owner, by*  
11 *first class mail, a notice of violation and opportunity to abate at*  
12 *least 14 days prior to assessing those fines or penalties.*

13 (b) For purposes of this section, “failure to maintain” includes  
14 failure to adequately care for the property, including, but not  
15 limited to, permitting excessive foliage growth that diminishes the  
16 value of surrounding properties, allowing trespassers or squatters,  
17 or permitting mosquito larva to grow in standing water.

18 (c) Fines and penalties collected pursuant to this section shall  
19 be directed to local nuisance abatement programs.

20 (d) These provisions shall not preempt any local ordinance that  
21 contains any greater standards or protections.

22 (e) *This section shall only apply to residential real property.*

23 ~~(e)~~

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

27 SEC. 6. Section 1161b is added to the Code of Civil Procedure,  
28 to read:

29 1161b. (a) Notwithstanding Section 1161a, a tenant or  
30 subtenant in possession of a rental housing unit that has been sold  
31 due to foreclosure shall be given 60 days’ written notice to quit  
32 pursuant to Section 1162 before the tenant or subtenant may be  
33 removed from the property as prescribed in this chapter.

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

37 SEC. 7. Nothing in this act is intended to affect any local  
38 just-cause eviction ordinance.

39 SEC. 8. The provisions of this act are severable. If any  
40 provision of this act or its application is held invalid, that invalidity

1 shall not affect other provisions or applications that can be given  
2 effect without the invalid provision or application.

3 SEC. 9. This act is an urgency statute necessary for the  
4 immediate preservation of the public peace, health, or safety within  
5 the meaning of Article IV of the Constitution and shall go into  
6 immediate effect. The facts constituting the necessity are:

7 In order to stabilize and protect the state and local economies  
8 and housing market at the earliest possible time, it is necessary for  
9 this act to take effect immediately.

O