

AMENDED IN ASSEMBLY APRIL 12, 2010

AMENDED IN ASSEMBLY MARCH 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1639**

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**Introduced by Assembly Members Nava, Bass, and Lieu**  
(Coauthor: Senator DeSaulnier)

January 11, 2010

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An act to amend Section 2923.5 of, and to add Article 1.7 (commencing with Section 2946) to Chapter 2 of Title 14 of Part 4 of Division 3 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1639, as amended, Nava. Mediated Mortgage Workout Program.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor, among other acts required prior to exercising a power of sale in a nonjudicial foreclosure proceeding.

This bill would establish the Mediated Mortgage Workout (MMW) Program. The program would be a process whereby borrowers and lenders would engage in mediation for purposes of developing a loan modification plan. The program would require that specified information regarding the MMW Program be included with the notice of default sent to a borrower, as defined, on a loan secured by residential real property of one- to 4-family dwelling units that is the primary residence of the borrower, as specified. The bill would require that this additional

notice be recorded in the office of the county recorder. By expanding the duties of county recorders, the bill would impose a state-mandated local program.

The bill would provide for an administrator of the program who would be appointed by the Governor and confirmed by the Senate. The program would require a borrower who elects to participate in the program to complete a specified form and return the form to the administrator of the program not later than 30 calendar days after receiving the notice of default. The program would require the borrower to submit other information to the administrator within 10 days of requesting to participate in the program, including tax returns, income verification, and a specified deposit of funds. The program would ~~also~~ require a borrower who elects to participate in the program to deposit with the administrator 50% of the current mortgage payment each month during participation in the MMW Program. The bill would also prohibit a mortgagee, trustee, beneficiary, or authorized agent from reporting negative credit information to a credit reporting agency about a borrower who has ~~successfully~~ completed the MMW Program and accepted a mortgage loan modification. The bill would impose various administrative fees, *and a specified minimum deposit*, payable by the mortgagee, trustee, beneficiary, or authorized agent, or by the borrower, as specified, who participate in the MMW Program.

The bill would also provide that the timelines set forth in the provision governing the exercise of the power of sale, as specified, would be suspended until the completion of the program, as specified.

The bill would require the administrator of the program, among other duties, to implement rules and standards for selecting qualified mediators and to develop standards for forms and reports required to implement the program. The bill would also require the administrator, upon receipt of a borrower's form whereby he or she elects to participate in the program, to randomly appoint an individual to serve as mediator from a list of qualified mediators in the county in which the property is located. The bill would establish the compensation for a mediator who provides his or her services to the program and require a mediator to use reasonable efforts to ensure that each MMW Program is completed within 60 calendar days of the mediator's appointment. The bill would ~~also~~ require the mediator to prepare a final report, as specified. The bill would also require, only until January 1, 2015, the administrator to report quarterly to the Legislature regarding the MMW Program, as specified. The bill would also require each mortgagee, trustee,

beneficiary, or authorized agent participating in the program to post specified data about its loans on its Internet Web site.

The bill would also make related and technical changes.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 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 file a notice of default pursuant to Section 2924  
5 until 30 days after initial contact is made as required by paragraphs  
6 (2) and (3) or 30 days after satisfying the due diligence  
7 requirements as described in subdivision (f).

8 (2) (A) A mortgagee, trustee, beneficiary, or authorized agent  
9 shall inform the borrower, via certified mail accompanying a notice  
10 of delinquency, that the borrower may request to participate in the  
11 Mediated Mortgage Workout Program under Article 1.7  
12 (commencing with Section 2946). The notice shall include, in  
13 boldface type, the telephone number, e-mail address, and Internet  
14 Web site for the administrator of the Mediated Mortgage Workout  
15 Program.

16 (B) (i) A borrower shall have 30 days from receipt of the notice  
17 to request participation in the Mediated Mortgage Workout  
18 Program.

19 (ii) If a borrower chooses to participate in the Mediated  
20 Mortgage Workout Program, the requirements in paragraph (3)  
21 shall be deemed to be completed.

22 (iii) A notice of default may not be filed while the borrower  
23 participates in the Mediated Mortgage Workout Program under  
24 Article 1.7 (commencing with Section 2946).

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

16 (b) A notice of default filed pursuant to Section 2924 shall  
17 include a declaration that the mortgagee, trustee, beneficiary, or  
18 authorized agent has contacted the borrower, has tried with due  
19 diligence to contact the borrower as required by this section, or  
20 that no contact was required pursuant to subdivision (g).

21 (c) If a mortgagee, trustee, beneficiary, or authorized agent had  
22 already filed the notice of default prior to the enactment of this  
23 section and did not subsequently file a notice of rescission, then  
24 the mortgagee, trustee, beneficiary, or authorized agent shall, as  
25 part of the notice of sale filed pursuant to Section 2924f, include  
26 a declaration that either:

27 (1) States that the borrower was contacted to assess the  
28 borrower's financial situation and to explore options for the  
29 borrower to avoid foreclosure.

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

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

35 (e) A borrower may designate, with consent given in writing,  
36 a HUD-certified housing counseling agency, attorney, or other  
37 advisor to discuss with the mortgagee, trustee, beneficiary, or  
38 authorized agent, on the borrower's behalf, the ~~borrowers~~  
39 *borrower's* financial situation and options for the borrower to  
40 avoid foreclosure. That contact made at the direction of the

1 borrower shall satisfy the contact requirements of paragraph (2)  
2 of subdivision (a). Any loan modification or workout plan offered  
3 at the meeting by the mortgagee, trustee, beneficiary, or authorized  
4 agent is subject to approval by the borrower.

5 (f) A notice of default may be filed pursuant to Section 2924  
6 when a mortgagee, trustee, beneficiary, or authorized agent has  
7 not contacted a borrower as required by paragraph (2) of  
8 subdivision (a) provided that the failure to contact the borrower  
9 occurred despite the due diligence of the mortgagee, trustee,  
10 beneficiary, or authorized agent. For purposes of this section, “due  
11 diligence” shall require and mean all of the following:

12 (1) A mortgagee, trustee, beneficiary, or authorized agent shall  
13 first attempt to contact a borrower by sending a first-class letter  
14 that includes the toll-free telephone number made available by  
15 HUD to find a HUD-certified housing counseling agency.

16 (2) (A) After the letter has been sent, the mortgagee, trustee,  
17 beneficiary, or authorized agent shall attempt to contact the  
18 borrower by telephone at least three times at different hours and  
19 on different days. Telephone calls shall be made to the primary  
20 telephone number on file.

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

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

32 (3) If the borrower does not respond within two weeks after the  
33 telephone call requirements of paragraph (2) have been satisfied,  
34 the mortgagee, beneficiary, or authorized agent shall then send a  
35 certified letter, with return receipt requested.

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

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

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

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

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

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

16 (g) Subdivisions (a), (c), and (f) shall not apply if any of the  
17 following occurs:

18 (1) The borrower has surrendered the property as evidenced by  
19 either a letter confirming the surrender or delivery of the keys to  
20 the property to the mortgagee, trustee, beneficiary, or authorized  
21 agent.

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

27 (3) A case has been filed by the borrower under Chapter 7, 11,  
28 12, or 13 of Title 11 of the United States Code and the bankruptcy  
29 court has not entered an order closing or dismissing the bankruptcy  
30 case, or granting relief from a stay of foreclosure.

31 (4) The borrower has completed participation in the Mediated  
32 Mortgage Workout Program, and participation did not result in a  
33 mortgage loan modification, or other result mutually agreed to by  
34 the borrower and the mortgagee, trustee, beneficiary, or authorized  
35 agent.

36 (h) This section shall apply only to mortgages or deeds of trust  
37 recorded from January 1, 2003, to December 31, 2007, inclusive,  
38 that are secured by owner-occupied residential real property  
39 containing no more than four dwelling units. For purposes of this  
40 subdivision, "owner-occupied" means that the residence is the

1 principal residence of the borrower as indicated to the lender in  
2 loan documents.

3 (i) For purposes of this section, a “borrower” includes a  
4 mortgagor or trustor.

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

8 SEC. 2. Article 1.7 (commencing with Section 2946) is added  
9 to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code,  
10 to read:

11  
12 Article ~~1.7~~ 1.7. Mediated Mortgage Workout Program

13  
14 2946. For purposes of this article:

15 (a) “Administrator” means the administrator of the Mediated  
16 Mortgage Workout (MMW) Program.

17 (b) “Borrower” includes a mortgagor, trustor, or owner of the  
18 residential real estate property described in the notice of default  
19 sent pursuant to Section 2924.

20 (c) “Meaningful participation” ~~includes both of~~ *shall be defined*  
21 *as* the following:

22 (1) Attendance at all mediation sessions.

23 (2) Presentation of all required documents and payment of all  
24 required fees.

25 (d) “Residential real estate property” means residential real  
26 property consisting of one- to four-family dwelling units.  
27 Owner-occupied condominiums shall be considered residential  
28 real estate property within the scope of this program, regardless  
29 of the number of family dwelling units in any single homeowners’  
30 association, complex, or community.

31 2946.1. (a) This article shall apply to a loan secured by  
32 residential real property that is the primary residence of the  
33 borrower and for which a notice of default has been filed pursuant  
34 to Section 2924.

35 (b) Chapter 2 (commencing with Section 1115) of Division 9  
36 *and Section 703.5* of the Evidence Code shall apply to a mediation  
37 conducted pursuant to this article.

38 2946.2. (a) The administrator shall be appointed by the  
39 Governor and confirmed by the Senate.

1 (b) The administrator shall do all of the following in order to  
2 carry out this article:

3 (1) Implement rules and standards for choosing qualified  
4 mediators.

5 (2) Implement rules and standards for the removal of mediators  
6 for good cause.

7 (3) Develop standards for forms and reports, as may be required  
8 to implement the MMW Program.

9 (4) Require additional training for mediators to meet the goals  
10 of this article.

11 (5) *Collect all moneys and fees as may be required to implement*  
12 *this program.*

13 2946.3. (a) A notice of default sent pursuant to Section 2924  
14 to a borrower of residential real property that is subject to this  
15 chapter shall include all of the following:

16 ~~(a)-(1)~~

17 (1) (A) A separate notice, entitled “Opportunity to Meet  
18 Face-to-Face with Your Lender/Loan Servicer and a Neutral  
19 Professional in a Mediated Mortgage Workout Program,” advising  
20 the borrower of his or her right to participate in an MMW Program  
21 to explore options for the borrower to avoid foreclosure. This  
22 notice and all of the documents required to be included with the  
23 notice of default shall be printed in large, ~~bold~~ *boldface* type and  
24 shall be printed in English, Spanish, Chinese, Tagalog, and Korean.  
25 This separate notice shall be sent to all borrowers of record. This  
26 notice shall be recorded, in addition to the notice of default, in the  
27 office of the appropriate county recorder.

28 ~~(2) The notice described in paragraph (1)~~

29 (B) *The notice described in subparagraph (A)* shall do all of the  
30 following:

31 ~~(A)~~

32 (i) Explain the requirements for participation in the MMW  
33 Program and advise the borrower of the procedures that are to be  
34 followed to make an election to participate in the program.

35 ~~(B)~~

36 (ii) Include the name, address, telephone number, facsimile  
37 number, and e-mail address of the mortgagee, trustee, beneficiary,  
38 or authorized agent, and the administrator of the MMW Program,  
39 as well as two or more local housing counseling agencies that are

1 approved by the United States Department of Housing and Urban  
2 Development.

3 ~~(c)~~

4 (iii) Advise the borrower that loan counselors are prohibited  
5 from collecting an advance fee.

6 ~~(b)~~

7 (2) Three copies of an election form, as developed and approved  
8 by the administrator of the MMW Program, upon which the  
9 borrower may indicate his or her election to either participate in,  
10 or waive participation in, the MMW Program.

11 ~~(e)~~

12 (3) Two separate envelopes, one addressed to the mortgagee,  
13 trustee, beneficiary, or authorized agent and one addressed to the  
14 administrator of the MMW Program, for use by the borrower to  
15 advise the mortgagee, trustee, beneficiary, or authorized agent and  
16 the administrator of the borrower's election to participate in the  
17 MMW Program.

18 ~~(d)~~

19 (b) This section shall not apply to borrowers who have  
20 previously completed the MMW Program.

21 2946.4. (a) If the borrower elects to participate in the MMW  
22 Program, the borrower shall complete the election form and mail  
23 a copy of the election form to the mortgagee, trustee, beneficiary,  
24 or authorized agent and to the administrator not later than 30  
25 calendar days after receipt of the notice of default. The election  
26 form shall be sent by certified mail, return receipt requested.

27 (b) *The administrator may allow the borrower to elect to*  
28 *participate in the MMW Program by completing the election form*  
29 *on an Internet Web site, by submitting the form via e-mail, or by*  
30 *completing the form over the telephone. The administrator shall*  
31 *maintain a platform that responsibly records and gives the*  
32 *borrower a hard copy record of his or her election to participate*  
33 *in the MMW Program and that record shall be in compliance with*  
34 *recognizable standards for recording and storing critical electronic*  
35 *information.*

36 ~~(b)~~

37 (c) Within 10 days of requesting to participate in the MMW  
38 Program, the borrower shall submit all of the following to the  
39 administrator:

- 1 (1) Tax returns filed for the prior tax year, if the borrower was
- 2 required to file a tax return for that year.
- 3 (2) Payroll or other income verification for the previous two
- 4 months.
- 5 (3) First deposit of funds in accordance with Section 2946.7.
- 6 ~~(e)~~
- 7 (d) Within 10 days of receiving notice that the borrower has
- 8 elected to participate in the MMW Program, the mortgagee, trustee,
- 9 beneficiary, or authorized agent shall submit all of the following
- 10 documents to the administrator:
  - 11 (1) The applicable Pooling and Service Agreement, if any.
  - 12 (2) The loan application, loan origination documents, appraisal,
  - 13 and payment history.
  - 14 (3) The original note and assignments or certificate regarding
  - 15 a lost document.
  - 16 (4) Documentary evidence of current ownership or chain of
  - 17 custody of the mortgage note.
  - 18 (5) The net present value formula that the mortgagee, trustee,
  - 19 beneficiary, or authorized agent uses.
- 20 ~~(d) The administrator may allow the borrower to elect to~~
- 21 ~~participate in the MMW Program by completing the election form~~
- 22 ~~on an Internet Web site, by submitting the form via e-mail, or by~~
- 23 ~~completing the form over the telephone. The administrator shall~~
- 24 ~~maintain a platform that responsibly records and gives the borrower~~
- 25 ~~a hard copy record of his or her election to participate in the MMW~~
- 26 ~~Program and that record shall be in compliance with recognizable~~
- 27 ~~standards for recording and storing critical electronic information.~~
- 28 (e) When a borrower has elected to participate in the MMW
- 29 Program, the timelines set forth in Section 2924 shall be suspended
- 30 for the duration of, and no further action may be taken to exercise
- 31 the power of sale until the completion of, the MMW Program, as
- 32 evidenced by the mediator’s final report as described in Section
- 33 2946.14.
- 34 2946.5. A mediator shall be compensated *by the administrator,*
- 35 *from payment made by the parties in advance of the mediation,*
- 36 *for his or her services at the hourly rate of one hundred fifty dollars*
- 37 *(\$150).*~~The This~~ compensation shall initially be paid by the
- 38 mortgagee, trustee, beneficiary, or authorized agent and, in the
- 39 event that the mortgage loan is modified, the borrower shall
- 40 reimburse the mortgagee, trustee, beneficiary, or authorized agent

1 for one-half of the total compensation paid to the mediator. The  
2 borrower's share of the mediator's fees may be added to the  
3 principal balance of the loan if requested by the borrower. If the  
4 parties' efforts to modify the loan fail and the property is sold, the  
5 mortgagee, trustee, beneficiary, or authorized agent, alone, shall  
6 be responsible for the expense of the mediator's fees.

7 2946.6. (a) Upon receipt of a borrower's form whereby he or  
8 she elects to participate in the MMW Program the administrator  
9 shall randomly appoint an individual from a list of qualified  
10 mediators *available to serve* in the county in which the property  
11 is located to act as the mediator for the borrower and the mortgagee,  
12 trustee, beneficiary, or authorized agent. The mediator shall contact  
13 the parties within 15 days of his or her appointment to schedule  
14 the first session of the MMW Program.

15 (b) (1) The administrator shall notify the mortgagee, trustee,  
16 beneficiary, or authorized agent of the borrower's election to  
17 participate in the MMW Program within 15 days of receipt of the  
18 borrower's election to participate in the program. The mortgagee,  
19 trustee, beneficiary, or authorized agent shall submit an  
20 administrative fee of five hundred dollars (\$500), as well as *a*  
21 *minimum deposit in the amount of six hundred dollars (\$600) to*  
22 *be applied toward mediation fees* and all required documentation,  
23 to the administrator within 10 days of the administrator's  
24 notification of the borrower's election. In the event that the  
25 mortgage loan is modified, as part of the modification plan, the  
26 borrower shall reimburse the mortgagee, trustee, beneficiary, or  
27 authorized agent two hundred fifty dollars (\$250) as partial  
28 reimbursement of this fee according to the same terms as set forth  
29 in Section 2946.5. In the event that the parties' efforts to modify  
30 the loan fail and the property is sold by the mortgagee, trustee,  
31 beneficiary, or authorized agent, the mortgagee, trustee,  
32 beneficiary, or authorized agent, alone, shall be responsible for  
33 the program fee.

34 (2) Failure of the mortgagee, trustee, beneficiary, or authorized  
35 agent to deposit the fee within 10 days of the administrator's  
36 notification of the borrower's election to participate shall result in  
37 a stay of foreclosure proceedings and delay of the MMW Program  
38 until the fee is deposited with an additional penalty of one hundred  
39 dollars (\$100) per day for each day after the deadline that the fee  
40 has not been deposited.

1 2946.7. Any borrower who elects to participate in the MMW  
 2 Program shall deposit with the administrator 50 percent of the  
 3 current mortgage payment every month during participation in the  
 4 MMW Program. The first monthly deposit shall be made within  
 5 10 days after requesting participation in the MMW Program. If  
 6 the borrower fails to comply with these terms, the borrower's  
 7 election shall be deemed to be canceled and the MMW Program  
 8 shall be deemed to be completed ~~for purposes of subdivision (e)~~  
 9 ~~of Section 2946.4.~~

10 2946.8. A borrower who participates in the MMW Program  
 11 shall not be required, as a condition of participation, or as a  
 12 condition of acceptance of a modification, to waive any rights and  
 13 remedies that may otherwise be available.

14 2946.10. (a) The borrower or borrowers and mortgagee, trustee,  
 15 beneficiary, or authorized agent shall attend the MMW Program  
 16 sessions in person.

17 (b) In the event of exigent circumstances, the administrator may  
 18 allow either party to be represented by a person with a power of  
 19 attorney or other written authorization to represent and bind the  
 20 party. In addition, each party may be represented by an attorney  
 21 or housing counselor. However, no attorney, other representative,  
 22 or loan counselor appearing on behalf of the borrower may receive  
 23 an advance fee for any services rendered in connection with the  
 24 MMW Program.

25 (c) No request for a continuance of an MMW Program session  
 26 may be granted, except upon showing of extraordinary  
 27 circumstances. A request shall be made to the administrator, at  
 28 ~~least three business days prior to the MMW Program session~~  
 29 ~~detailing the extraordinary circumstances that require the~~  
 30 ~~continuance. A fee of three hundred dollars (\$300) shall be levied~~  
 31 ~~upon the party requesting the continuance, payable to the mediator~~  
 32 ~~or as otherwise directed by the administrator, if a continuance is~~  
 33 ~~granted. *least 15 days prior to the scheduled mediation detailing*~~  
 34 ~~*the extraordinary circumstances that require the continuance. Any*~~  
 35 ~~*request for continuance that occurs within 15 days of the scheduled*~~  
 36 ~~*mediation shall be accompanied by a three-hundred-dollar (\$300)*~~  
 37 ~~*deposit to apply toward the mediator's fee. If the requested*~~  
 38 ~~*continuance is granted, the administrator shall levy a fee of three*~~  
 39 ~~*hundred dollars (\$300) for the benefit of the mediator.*~~

1 (d) The borrower and mortgagee, trustee, beneficiary, or  
2 authorized agent may agree on the terms of a loan modification  
3 which may include any or all of the following features:

4 (1) An interest rate reduction for a fixed term of at least five  
5 years.

6 (2) An extension of the mortgage term, not to exceed 40 years  
7 from the original date of the loan.

8 (3) Deferral of a portion of the principal amount of the unpaid  
9 principal balance until maturity of the loan.

10 (4) Reduction of the principal balance.

11 (5) Compliance with a federally mandated loan modification  
12 program.

13 (6) Other alternatives that may reduce the borrower's monthly  
14 payment to 31 percent or less of the borrower's debt-to-income  
15 ratio and that are designed to meet long-term sustainability for the  
16 borrower.

17 (7) Nothing in this section shall be construed to prevent a  
18 creditor from offering or accepting alternatives in writing to  
19 foreclosure, such as a short sale or deed-in-lieu of foreclosure, but  
20 only if the borrower requests these alternatives, rejects a loan  
21 modification offered pursuant to this section, or does not qualify  
22 for a loan modification pursuant to this section.

23 (e) If a borrower has failed to meaningfully participate in the  
24 MMW Program, the MMW Program shall be ~~deemed suspended~~  
25 ~~for purposes of subdivision (e) of Section 2946.3. If the borrower~~  
26 ~~suspended. If the borrower~~ cures the noncompliance to the  
27 satisfaction of the ~~mediator administrator~~ within 10 days of notice  
28 of failure to comply, the ~~mediator administrator~~ shall rescind  
29 suspension of the mediation sessions and ~~continue with the MMW~~  
30 ~~Program. the MMW Program will be continued.~~

31 (f) If a mortgagee, trustee, beneficiary, or authorized agent fails  
32 to meaningfully participate in the MMW Program, the MMW  
33 Program shall be suspended. During the suspension of the program  
34 for failure to meaningfully participate, the mortgagee, trustee,  
35 beneficiary, or authorized agent may not pursue further foreclosure  
36 actions until such time as the mortgagee, trustee, beneficiary, or  
37 authorized agent cures the noncompliance.

38 2946.11. A mortgagee, trustee, beneficiary, or authorized agent  
39 shall not report negative credit information about a borrower to a  
40 credit reporting agency if the borrower has successfully participated

1 in the MMW Program and a mortgage loan modification has been  
2 accepted.

3 2946.12. A borrower shall not be responsible for fees, late  
4 payment charges, or other monetary penalties while the MMW  
5 Program or final report is pending.

6 2946.13. The mediator shall use reasonable efforts to ensure  
7 that each MMW Program is completed within 60 calendar days  
8 of the mediator's appointment.

9 2946.14. (a) The mediator's final report shall ~~describe the~~  
10 ~~basic terms of the loan at issue, including the principal balance~~  
11 ~~and arrearages. The final report~~ *be submitted to the administrator*  
12 *within 10 days of completion of the mediation and* shall state  
13 whether a mutually acceptable resolution was reached between  
14 the parties.

15 (b) The final report shall be sent by first-class mail or via  
16 electronic means to the borrower, mortgagee, trustee, beneficiary,  
17 or authorized agent, and the administrator and shall include a  
18 statement that the MMW Program has been completed.

19 2946.15. (a) (1) The administrator shall report quarterly to  
20 the Legislature regarding the performance of the MMW Program,  
21 including all of the following information:

22 (A) The number of homeowners who attend mediation prior to  
23 notice of default.

24 (B) The number of homeowners who attend mediation after  
25 receiving a notice of default.

26 (C) The number of mediations suspended because of lack of  
27 meaningful participation by the borrower.

28 (D) The number of mediations suspended because of lack of  
29 meaningful participation on the part of the mortgagee, trustee,  
30 beneficiary, or authorized agent.

31 (E) The number of mediations that result in a loan modification.

32 (F) The number of mediations that result in a solution other than  
33 a loan modification.

34 (2) (A) The requirement for submitting a report pursuant to  
35 paragraph (1) is inoperative on January 1, 2015, pursuant to Section  
36 10231.5 of the Government Code.

37 (B) A report to be submitted pursuant to paragraph (1) shall be  
38 submitted in compliance with Section 9795 of the Government  
39 Code.

- 1 (b) Each mortgagee, trustee, beneficiary, or authorized agent  
2 participating in the MMW Program shall post public data reports  
3 on a quarterly basis on its Internet Web site detailing the following:  
4 (1) The number of loans that have been modified through the  
5 MMW Program and the type of modification.  
6 (2) The final disposition of loans that were in the MMW  
7 Program but not modified.  
8 (3) The final disposition of loans that did not go through in the  
9 MMW Program.  
10 (A) The type of loans in a portfolio serviced by others,  
11 delineated by prime, subprime, and nontraditional.  
12 (B) The loans in a portfolio or serviced by others that are  
13 securitized.  
14 (C) The number of home retention actions.  
15 (D) Redefault rates for portfolio loans and loans serviced for  
16 others.  
17 (E) The default rates for portfolio loans and loans serviced for  
18 others.  
19 (F) The default rates of loans modified in 2008 by changes in  
20 payment.  
21 (G) Newly initiated home retention actions compared with  
22 foreclosure actions.  
23 (H) Completed foreclosures and other home forfeiture actions.  
24 (I) The overall portfolio performance by percentage.  
25 (J) The performance of government guaranteed loans, by  
26 percentage.  
27 (K) The performance of government sponsored enterprise loans,  
28 by percentage.  
29 (L) Seriously delinquent mortgages, by percentage.  
30 (M) Home Affordable Modification Program actions by investor  
31 and risk category.  
32 (N) Changes in loan terms made by modifications during 2009.  
33 (O) Changes in monthly principal and interest payments owing  
34 to modification, by the number of modifications.  
35 (P) The number of modified loans, 30 or more days delinquent.  
36 (Q) The number of modified loans, 60 or more days delinquent.  
37 (R) The number of modified loans, 90 or more days delinquent.  
38 SEC. 3. If the Commission on State Mandates determines that  
39 this act contains costs mandated by the state, reimbursement to  
40 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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