

AMENDED IN ASSEMBLY AUGUST 16, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN ASSEMBLY JUNE 10, 2010

AMENDED IN SENATE MAY 27, 2010

AMENDED IN SENATE MAY 18, 2010

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 8, 2010

SENATE BILL

No. 1275

Introduced by Senators Leno and Steinberg

(Principal coauthor: Senator Cedillo)

(Principal coauthor: Assembly Member Caballero)

(Coauthors: Assembly Members Brownley, Nava, and Skinner)

February 19, 2010

An act to amend Section 2923.5 of, and to add and repeal Sections 2923.4, 2923.7, 2923.73, 2923.75, and 2923.77 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1275, as amended, Leno. Mortgages: foreclosures.

Existing law, until January 1, 2013, and as applied to mortgages and deeds of trust recorded between January 1, 2003, and December 31, 2007, that are secured by owner-occupied residential real property containing no more than 4 dwelling units, requires a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower, as defined,

prior to filing a notice of default, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. Existing law requires the notice of default to include a specified declaration from the mortgagee, beneficiary, or authorized agent regarding its contact with the borrower.

This bill would, until January 1, 2013, extend those requirements for those types of dwellings to apply to mortgages or deeds of trust recorded prior to January 1, 2009, if the loans are required to be reviewed under federal Home Affordable Modification Program (HAMP) guidelines, or between January 1, 2003, and January 1, 2009, if the loans are not required to be reviewed under HAMP guidelines. The bill would require a mortgagee, beneficiary, or authorized agent, within a specified time period prior to the filing of a notice of default, to provide the borrower with written information regarding loan modifications and a specified notice regarding the borrower's rights during the foreclosure process, subject to specified exceptions. The bill would require an unspecified state entity to make that notice available in English and specified languages. The bill would further revise the borrower contact requirements described above by requiring a mortgagee, beneficiary, or authorized agent to make reasonable borrower solicitation efforts, as specified, to explore options for the borrower to avoid foreclosure. The bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default until the borrower has been evaluated and determined to be ineligible for a loan modification or the borrower has failed to submit an application prior to the passing of the deadline. The bill would specify minimum time periods in which the borrower may submit an application or supplemental information for a loan modification, and would require the mortgagee, beneficiary, or authorized agent, if it denies the application, to send a denial explanation letter within a specified time period. These requirements would not apply to a mortgagee, beneficiary, or authorized agent that has no loan modification option available to the borrower or to a grandfathered party, as defined.

This bill would further require, until January 1, 2013, with respect to those properties described above, that a mortgagee, beneficiary, or authorized agent, concurrently with the filing of a notice of default, record a declaration of compliance that attests to specified facts relating to its borrower solicitation and foreclosure avoidance efforts, except as provided. ~~The bill would provide that failure to record a declaration of compliance, or failure to materially comply with specified provisions,~~

~~would constitute grounds for the~~ *authorize the* borrower to bring an action; within one year of the trustee sale; to void the foreclosure; *or* request an injunction *if, among other things, the mortgagee, beneficiary, or authorized agent records a notice of default without completing reasonable borrower solicitation efforts,* or to recover specified damages ~~from~~ *if the mortgagee, trustee, beneficiary, or authorized agent fails to record a declaration of compliance or materially comply with specified provisions,* if specified conditions exist. The bill would provide that a mortgagee, trustee, beneficiary, or authorized agent shall have no civil liability if it satisfies specified requirements prior to the initiation of legal action by the borrower.

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. *The Legislature finds and declares that this bill*
 2 *is not intended to establish a substantive right to a loan*
 3 *modification.*
 4 SECTION 1.
 5 SEC. 2. Section 2923.4 is added to the Civil Code, to read:
 6 2923.4. (a) A state government entity shall create ~~the following~~
 7 ~~notice in at least 12-point type and make it available in English a~~
 8 *notice containing the following text in at least 12-point type and*
 9 *shall make it available in electronic format on its official Internet*
 10 *Web site in English and the languages set forth in subdivision (b)*
 11 *of Section 1632:*
 12
 13 “Important Notice Regarding Your Rights and Foreclosure
 14 Avoidance Options: California law requires that you receive this
 15 notice of your legal rights before the foreclosure process begins.
 16 ARE YOU HAVING TROUBLE PAYING YOUR
 17 MORTGAGE?
 18 If you are having trouble paying your mortgage, you should
 19 contact your loan servicer as soon as possible to discuss options
 20 for avoiding foreclosure. Your loan servicer is the company listed
 21 on your mortgage bills that collects your mortgage payments.
 22 You may also call 1-800-569-4287 *or* 1-888-995-HOPE to find
 23 a housing counseling agency certified by the United States

1 Department of Housing and Urban Development (HUD) that offers
2 free services in your area.

3 POTENTIAL FORECLOSURE AVOIDANCE OPTIONS

4 One potential option for avoiding foreclosure is a loan
5 modification. Your loan servicer may be participating in the federal
6 loan modification program called the Home Affordable
7 Modification Program (HAMP), which has specific requirements
8 and guidelines. To see if your loan servicer is participating, or to
9 find out more about this program, visit
10 http://www.makinghomeaffordable.gov/contact_servicer.html.

11 Your loan servicer may, but is not required to, offer other
12 *non-HAMP* types of loan modifications ~~instead of or in addition~~
13 ~~to HAMP~~. However, not all loan servicers offer loan modifications,
14 and not all borrowers are eligible to apply for a loan modification.
15 You may ~~also qualify~~ *instead for other options for avoiding*
16 *foreclosure, such as loan refinancing, a temporary forbearance, a*
17 *repayment plan, short sale, or a deed in lieu of foreclosure. for*
18 *other options, such as refinancing, a repayment plan, or a short*
19 *sale.*

20 With this notice, you should have received a letter from your
21 loan servicer that describes any options for avoiding foreclosure
22 ~~that may be available to you. That letter should describe any types~~
23 ~~of loan modifications that you may be eligible to apply for, and~~
24 ~~list the steps you must take to apply.~~ *that may be available to you.*

25 If the letter from your loan servicer indicates that you may be
26 eligible to apply for a loan modification and you ~~are interested in~~
27 ~~applying~~ *want to apply*, you must submit the required
28 documentation to your loan servicer as soon as possible. Your loan
29 servicer must give you at least 45 days from the date you received
30 this notice to ~~submit the required documentation~~ *apply*. Be sure
31 to read and carefully review any ~~communication~~ *letters* from your
32 loan servicer, and submit all of the documentation and information
33 required by the deadlines indicated in ~~the loan servicer's~~
34 ~~communications~~ *those letters*. If you submit all of the required
35 documentation and information by the specified deadlines, your
36 loan servicer must review your application and inform you of its
37 decision before initiating the foreclosure process.

38 If your loan servicer denies your request for a loan modification,
39 it must send you a ~~detailed letter that explains the reason for the~~
40 ~~denial and provides~~ *denial explanation letter and provide* you with

1 contact information for the loan servicer if you need more
2 information or want to dispute the denial.

3 THE FORECLOSURE PROCESS

4 ~~If your loan servicer complies with the contact and notice~~
5 ~~requirements described in Sections 2923.5 and 2923.73 of the Civil~~
6 ~~Code, including sending you a denial explanation letter if you are~~
7 ~~eligible to apply for a loan modification and submit a timely loan~~
8 ~~modification application, it may proceed with the foreclosure~~

9 *If you are not eligible to apply for a loan modification, if you*
10 *do not apply by the specified deadline, or if you apply by the*
11 *deadline but your loan servicer denies your application and sends*
12 *you a denial explanation letter, the loan servicer may start the*
13 *foreclosure process. Your loan servicer may not foreclose on your*
14 *home without filing recording official documents with the county*
15 *recorder. You are entitled to receive copies of those documents.*

16 Notice of Default:

17 ~~The first step in the foreclosure process is the filing of a notice~~
18 ~~of default. If your loan servicer records a notice of default on your~~
19 ~~loan, it must mail you a copy of that notice by certified mail and~~

20 *To start the foreclosure process, your loan servicer must record*
21 *a notice of default. After recording the notice, your loan servicer*
22 *has to mail you a copy of that notice by certified mail and then*
23 *must wait at least three months before taking further steps to sell*
24 *your home.*

25 Notice of Sale:

26 ~~Three months after filing recording the notice of default, your~~
27 ~~loan servicer may file record a notice of sale that sets out the date,~~
28 ~~time, and place of the scheduled foreclosure sale. Your loan~~
29 ~~servicer must post the notice of sale on your property, mail you a~~
30 ~~copy of the notice by certified mail, and wait at least 20 days before~~
31 ~~selling your home. ~~Your~~ The notice of sale will include the contact~~
32 ~~information of the person or company to call if you want more~~
33 ~~information about your sale date. You should make note of that~~
34 ~~contact information and be sure to check for any changes to the~~
35 ~~sale date.~~

36 Please seek legal help if you believe that you have been denied
37 your legal foreclosure rights. Keep in mind, though, that it is illegal
38 for any person, including a lawyer, to charge you *any up-front fees*
39 for helping you with a loan modification or other effort to avoid

1 foreclosure before providing the services promised.” try to get a
 2 loan modification or try to delay or avoid foreclosure.”

3

4 (b) The English and translated ~~forms~~ *versions* of this notice
 5 shall be made available *in electronic format on the government*
 6 *entity’s official Internet Web site* on or before January 31, 2011.

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

10 ~~SEC. 2.~~

11 *SEC. 3.* Section 2923.5 of the Civil Code is amended to read:

12 2923.5. (a) A mortgagee, trustee, beneficiary, or authorized
 13 agent may not file a notice of default pursuant to Section 2924
 14 until the applicable requirements of this section and Sections
 15 2923.7 and 2923.73 have been satisfied.

16 (b) For all mortgage loans *subject to this section*, a notice of
 17 default may not be filed until a borrower either applies for a loan
 18 modification and has been evaluated and denied for a loan
 19 modification based on the requirements and guidelines used by
 20 the mortgagee, beneficiary, or authorized agent, or reasonable
 21 borrower solicitation efforts have been completed and the
 22 borrower’s deadline for submitting a loan modification application
 23 has passed without the borrower applying for a loan modification.
 24 If a mortgagee, beneficiary, or authorized agent has no loan
 25 modification option available to a given borrower, a notice of
 26 default may be filed 30 days after reasonable borrower solicitation
 27 efforts regarding any other foreclosure avoidance options available
 28 to that borrower have been completed.

29 (c) For purposes of this section, reasonable borrower solicitation
 30 efforts shall consist of all of the following:

31 (1) After a loan becomes ~~16 days~~ delinquent, but not later than
 32 10 days after the loan becomes 60 days delinquent, a mortgagee,
 33 beneficiary, or authorized agent shall send the borrower a written
 34 communication, by certified mail with return receipt requested,
 35 ~~containing~~ *or any other means of delivery that includes a return*
 36 *receipt, that contains* both of the following:

37 (A) A copy of the informational notice described in Section
 38 2923.4 *in English or, if communications with the borrower have*
 39 *been primarily in one of the languages set forth in subdivision (b)*
 40 *of Section 1632, then in that language.* A mortgagee, beneficiary,

1 or authorized agent shall be subject to the requirements of this
2 subparagraph 30 days following the availability of the English and
3 translated ~~forms~~ *versions* of the notice, but in no event earlier than
4 January 1, 2011.

5 (B) A letter that includes the following information, as
6 applicable:

7 ~~(i) A clear description of the loan modification options available~~
8 ~~to the borrower, if any, and a list of the steps the borrower must~~
9 ~~take to apply for a loan modification, if the borrower is eligible to~~
10 ~~be considered for a loan modification by the mortgagee,~~
11 ~~beneficiary, or authorized agent.~~

12 ~~(ii) A statement that no loan modification option is available to~~
13 ~~the borrower, if the mortgagee, beneficiary, or authorized agent~~
14 ~~does not offer any loan modification programs or if the borrower~~
15 ~~is not eligible to be considered for a loan modification.~~

16 ~~(i) A list of the foreclosure avoidance options available to the~~
17 ~~borrower, if any.~~

18 ~~(ii) If the borrower is eligible to be considered for a loan~~
19 ~~modification by the mortgagee, beneficiary, or authorized agent,~~
20 ~~a list of the steps the borrower is required to take to apply for a~~
21 ~~loan modification.~~

22 ~~(iii) If the mortgagee, beneficiary, or authorized agent does not~~
23 ~~offer any loan modifications or if the borrower is not eligible to~~
24 ~~be considered for a loan modification, a statement that no loan~~
25 ~~modification option is available to the borrower.~~

26 ~~(iii)~~

27 ~~(iv) A toll-free telephone number that will provide access to a~~
28 ~~live representative during business hours for borrowers who wish~~
29 ~~to discuss options for avoiding foreclosure with their mortgagee,~~
30 ~~beneficiary, or authorized agent.~~

31 ~~(iv)~~

32 ~~(v) The Internet Web site address, if any, of the mortgagee,~~
33 ~~beneficiary, or authorized agent, where a borrower may obtain the~~
34 ~~information described in paragraph (5).~~

35 (2) (A) A mortgagee, beneficiary, or authorized agent shall
36 contact the borrower in person or by telephone in order to assess
37 the borrower's financial situation and explore options for the
38 borrower to avoid foreclosure. The mortgagee, beneficiary, or
39 authorized agent shall attempt to make this contact, at a minimum,
40 by calling the borrower by telephone at the last known telephone

1 number of record at least three times, *with each call made at*
2 *different hours and on different days.* These efforts shall be
3 completed no later than 15 calendar days after the date ~~that the~~
4 *mortgagee, beneficiary, or authorized agent sends* the
5 informational notice and letter required by paragraph (1) ~~are sent~~
6 *to the borrower.* This in-person or telephone communication shall
7 be clearly identified as an attempt to initiate discussion with the
8 borrower about foreclosure avoidance options, and may not include
9 a demand for immediate payment of any past due amounts owed
10 by the borrower. During the initial contact, the mortgagee,
11 beneficiary, or authorized agent shall advise the borrower that he
12 or she has the right to request a subsequent meeting and, if
13 requested, the mortgagee, beneficiary, or authorized agent shall
14 schedule the meeting to occur within 14 days. The assessment of
15 the borrower's financial situation and discussion of options may
16 occur during the first contact, or at the subsequent meeting
17 scheduled for that purpose. In either case, the borrower shall be
18 provided the toll-free telephone number made available by the
19 United States Department of Housing and Urban Development
20 (HUD) to find a HUD-certified housing counseling agency. Any
21 meeting may occur telephonically.

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

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

32 (3) If contact has not been made with the borrower within two
33 weeks after the in-person or telephone contact requirements of
34 paragraph (2) have been satisfied, the mortgagee, beneficiary, or
35 authorized agent shall then send a certified letter, with return receipt
36 requested, that includes, at a minimum, the information set forth
37 in subparagraph (B) of paragraph (1) of subdivision (c).

38 (4) The mortgagee, beneficiary, or authorized agent shall provide
39 a means for the borrower to contact it in a timely manner, including

1 a toll-free telephone number that will provide access to a live
2 representative during business hours.

3 (5) The mortgagee, beneficiary, or authorized agent shall post
4 a prominent link on the homepage of its Internet Web site, if any,
5 to all of the following:

6 (A) Information about any available options for avoiding
7 foreclosure.

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) Contact information for borrowers who wish to discuss
12 options for avoiding foreclosure with their mortgagee, beneficiary,
13 or authorized agent.

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

16 (d) If the mortgagee, beneficiary, or authorized agent is
17 participating in the federal Home Affordable Modification Program
18 (HAMP) or is otherwise required to review the borrower's loan
19 under HAMP guidelines, compliance with the borrower solicitation
20 requirements set forth in the applicable HAMP guidelines shall
21 satisfy the reasonable borrower solicitation efforts requirement set
22 forth in this section as long as the mortgagee, beneficiary, or
23 authorized agent provides the borrower with the written
24 communication required by paragraph (1) of subdivision (c) as
25 part of, or in addition to, the solicitation efforts conducted pursuant
26 to the applicable HAMP guidelines.

27 (e) If the loan at issue is not required to be reviewed under
28 HAMP guidelines, and the mortgagee, trustee, beneficiary, or
29 authorized agent had already filed a notice of default prior to
30 January 1, 2011, and did not subsequently file a notice of
31 rescission, then the mortgagee, trustee, beneficiary, or authorized
32 agent shall include as part of the notice of sale filed pursuant to
33 Section 2924f a declaration that the mortgagee, beneficiary, or
34 authorized agent sent a denial explanation letter to the borrower
35 that includes the information set forth in paragraph (2) of
36 subdivision (a) of Section 2923.73 at least 30 calendar days before
37 filing the notice of sale, only if both of the following conditions
38 are met:

39 ~~(1) The mortgagee, beneficiary, or authorized agent has an~~
40 ~~existing loan modification program or a borrower is otherwise~~

1 (1) *The borrower is eligible to be considered for a loan*
2 *modification by the mortgagee, beneficiary, or authorized agent.*

3 (2) *The borrower applied for a loan modification in accordance*
4 *with the mortgagee, beneficiary, or authorized agent's applicable*
5 *procedures no later than 30 calendar days after receiving the notice*
6 *of default.*

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

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

12 (h) A borrower may designate, with consent given in writing,
13 a HUD-certified housing counseling agency, attorney, or other
14 advisor to discuss with the mortgagee, beneficiary, or authorized
15 agent, on the borrower's behalf, the borrowers financial situation
16 and options for the borrower to avoid foreclosure. That contact
17 made at the direction of the borrower shall satisfy the contact
18 requirements of subdivision (c). Any loan modification or other
19 foreclosure avoidance option offered by the mortgagee, beneficiary,
20 or authorized agent is subject to approval by the borrower.

21 (i) (1) Subdivisions (a) and (b) shall not apply if any of the
22 following occurs:

23 (A) The borrower has surrendered the property as evidenced by
24 either a letter confirming the surrender or delivery of the keys to
25 the property to the mortgagee, trustee, beneficiary, or authorized
26 agent.

27 (B) The borrower has contracted with an organization, person,
28 or entity whose primary business is advising people who have
29 decided to leave their homes on how to extend the foreclosure
30 process and avoid their contractual obligations to mortgagees or
31 beneficiaries.

32 (C) A case has been filed by the borrower under Chapter 7, 11,
33 12, or 13 of Title 11 of the United States Code and the bankruptcy
34 court has not entered an order closing or dismissing the bankruptcy
35 case, or granting relief from a stay of foreclosure. This shall not
36 preclude a mortgagee, trustee, beneficiary, or authorized agent
37 from soliciting or considering a borrower who is in bankruptcy
38 for a loan modification, whether under the requirements of HAMP,
39 or under its own proprietary loan modification program.

1 (2) Nothing in this subdivision shall be construed to diminish
2 in any way the obligations of a mortgagee, trustee, beneficiary, or
3 authorized agent that is participating in HAMP or is otherwise
4 required to review a loan under HAMP guidelines.

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

11 (1) With respect to loans required to be reviewed under HAMP
12 guidelines, this section shall apply only to mortgages or deeds of
13 trust recorded prior to January 1, 2009.

14 (2) With respect to loans not required to be reviewed under
15 HAMP guidelines, this section shall apply only to mortgages or
16 deeds of trust recorded between January 1, 2003, and January 1,
17 2009.

18 (k) This section shall not apply to a grandfathered party, as
19 defined in Section 2923.77.

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

23 ~~SEC. 3.~~

24 *SEC. 4.* Section 2923.7 is added to the Civil Code, to read:

25 2923.7. (a) (1) In order to initiate the foreclosure process, a
26 mortgage servicer shall do both of the following:

27 (A) For purposes of completing the declaration of compliance
28 described in paragraph (2), compile in one place a record
29 demonstrating that the reasonable borrower solicitation efforts
30 required by Section 2923.5 have been ~~met~~ *completed*. This record
31 shall include the dates and times of, and addresses and telephone
32 numbers used for, the contact or attempted contact required by
33 Section 2923.5. The record shall be made available to the borrower
34 within 10 business days if requested in writing after ~~the~~ *a* notice
35 of default has been filed.

36 (B) Transmit to the foreclosure trustee or authorized agent a
37 declaration of compliance that is signed on behalf of the mortgage
38 servicer. The declaration shall be signed either by an individual
39 having personal knowledge of the facts stated within, or by an
40 individual with authority to bind the mortgage servicer, who

1 certifies that the declaration is based upon records that were made
 2 in the regular course of the servicer’s business at or near the time
 3 of the events recorded. The declaration of compliance shall be
 4 included as part of, or attached to, every notice of default filed
 5 pursuant to Section 2924. A notice of default that does not include
 6 a declaration of compliance shall not be recorded.

7 (2) The declaration of compliance shall be substantially similar
 8 to the following form:

9

10 DECLARATION OF COMPLIANCE

11 I. BORROWER CONTACT SOLICITATION EFFORTS

12 A. This loan is not subject to Cal. Civil Code Sec. 2923.5,
 13 pursuant to (check all that apply):

14

15 Cal. Civil Code Sec. 2923.5(i).

16 Cal. Civil Code Sec. 2923.5(j).

17

18

19 If item (I)(A) is checked, no further information regarding borrower
 20 solicitation efforts is required. If item (I)(A) is not checked,
 21 complete item (I)(B).

22

23 B. This loan is subject to Cal. Civil Code Sec. 2923.5, and the
 24 mortgagee, beneficiary, or authorized agent has complied with the
 25 requirements of Cal. Civil Code Sec. 2923.5 by satisfying the
 26 applicable reasonable borrower solicitation efforts described in
 27 Cal. Civil Code Sec. 2923.5(c). If checked, insert the date that the
 28 reasonable borrower solicitation efforts were completed here: _____

29

30 II. FORECLOSURE AVOIDANCE REVIEW

31 A. This loan is not subject to Cal. Civil Code Sec. 2923.73,
 32 pursuant to (check all that apply):

33

34 Cal. Civil Code Sec. 2923.73(e).

35 Cal. Civil Code Sec. 2923.73(f).

36 Cal. Civil Code Sec. 2923.73(g).

37

38

1 If item (II)(A) is checked, no further information regarding
2 borrower solicitation efforts is required. If item (II)(A) is not
3 checked, complete item (II)(B).

4

5 B. This loan is subject to Cal. Civil Code Sec. 2923.73 and
6 (check only one):

7

8 The borrower was evaluated for a loan modification but did not qualify, and
9 the mortgagee, beneficiary, or authorized agent sent the borrower a denial
10 explanation letter in compliance with the requirements of Cal. Civil Code Sec.
11 2923.73(a)(2).

12 ~~The borrower initiated an application for a loan modification either verbally~~
13 ~~or in writing but did not submit all required written application materials by~~
14 ~~the applicable deadline, and the mortgagee, beneficiary, or authorized agent~~
15 ~~sent the borrower a denial explanation letter in compliance with the~~
16 ~~requirements of Cal. Civil Code Sec. 2923.73(a)(1).~~

17 ~~The borrower did not initiate an application for a loan modification either~~
18 ~~verbally or in writing by the applicable deadline.~~

19 ~~The borrower was offered a HAMP trial period plan, but the borrower did~~
20 ~~not accept the trial period plan or failed to comply with the terms of~~ *did not*
21 *complete* the plan.

22 The borrower was offered a permanent loan modification, but the borrower
23 did not accept the modification offered.

24 The borrower was offered and accepted a permanent loan modification, but
25 ~~the borrower failed to~~ *did not* comply with the terms of the modification.

26 The borrower communicated to the mortgagee, beneficiary, or authorized
27 agent that he or she ~~is not interested in pursuing~~ *does not intend to apply for*
28 a loan modification.

29

30

31 (b) This section shall apply only to mortgages or deeds of trust
32 ~~recorded prior to January 1, 2009~~, that are secured by
33 owner-occupied residential real property containing no more than
34 four dwelling units. For purposes of this subdivision,
35 “owner-occupied” means that the residence is the principal
36 residence of the borrower as indicated to the lender in the loan
37 documents.

38 (c) This section shall not apply to a grandfathered party, as
39 defined in Section 2923.77.

1 (d) 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. 4.~~

5 *SEC. 5.* Section 2923.73 is added to the Civil Code, to read:

6 2923.73. (a) If a borrower initiates an application for a loan
7 modification ~~either verbally or in writing~~ *according to the*
8 *procedures of the mortgagee, beneficiary, or authorized agent,*
9 and the mortgagee, beneficiary, or authorized agent denies either
10 a permanent loan modification or a federal Home Affordable
11 Modification Program (HAMP) trial period plan, the mortgagee,
12 beneficiary, or authorized agent shall send the borrower by certified
13 mail no later than 10 business days following the denial decision
14 a denial explanation letter that ~~clearly explains~~ *states* the reason
15 or reasons for the denial.

16 (1) If the loan modification is denied because the borrower failed
17 to provide all required verification documents or information by
18 the applicable deadline as set forth in subdivision (b), the letter
19 shall indicate the date by which *the borrower was directed to*
20 *provide* the documents or information ~~were to be provided~~, list the
21 documents or information that were not provided, and state that
22 the borrower's request for a loan modification has been denied for
23 this reason.

24 (2) If the borrower submitted all required written application
25 materials for a loan modification by the applicable deadline as set
26 forth in subdivision (b), and the application is denied, the denial
27 explanation letter shall include all of the following information in
28 English or, if communications with the borrower have been
29 primarily in one of the languages set forth in subdivision (b) of
30 Section 1632, then in that language:

31 (A) The date the mortgagee, beneficiary, or authorized agent
32 received the last of all the materials it requires in order to ~~review~~
33 *complete its review of* the borrower's application for a loan
34 modification.

35 ~~(B) The date on which a decision was made regarding the~~
36 ~~borrower's application.~~

37 ~~(C) The final decision made by the mortgagee, beneficiary, or~~
38 ~~authorized agent.~~

39 *(B) The date on which the mortgagee, beneficiary, or authorized*
40 *agent made the decision to deny the borrower's loan application.*

1 ~~(D)~~

2 (C) If the mortgagee, beneficiary, or authorized agent was
3 required to consider the borrower for a loan modification under
4 HAMP, the information required to be provided in the borrower
5 notice described in the federal Home Affordable Modification
6 Guidelines Supplemental Directive 09-08, issued November 3,
7 2009, and any amendments thereto.

8 ~~(E) Information explaining the reasons the borrower did not~~
9 ~~qualify for a loan modification, including, but not limited to, the~~
10 ~~following:~~

11 ~~(i) If applicable, an explanation of any investor guidelines or~~

12 ~~(D) The reason or reasons why the borrower did not qualify for~~
13 ~~a loan modification, including, as applicable, any of the following:~~

14 ~~(i) A description of any investor guidelines or restrictions on~~
15 ~~loan modifications that resulted in the denial decision.~~

16 ~~(ii) If the denial decision is based on the borrower's income or~~
17 ~~expenses, or on a debt-to-income ratio or net present value~~
18 ~~calculation, any borrower income or expense figures, including,~~
19 ~~but not limited to, property taxes and hazard insurance premiums,~~
20 ~~used in determining the borrower's qualification for a loan~~
21 ~~modification: expenses, the borrower income or expense figures~~
22 ~~used to determine the borrower's qualification for a loan~~
23 ~~modification, including, at a minimum, the borrower's monthly~~
24 ~~income, property taxes, and hazard insurance premiums.~~

25 ~~(iii) If applicable, a finding that the borrower was previously~~
26 ~~offered a loan modification and failed to successfully make~~
27 ~~payments under the terms of the modified loan.~~

28 (F) The name and contact information of the holder of the note
29 for the borrower's loan.

30 (G) A description of other foreclosure alternatives for which
31 the borrower may be eligible, if any, including, but not limited to,
32 other loan modification programs, short sale, or deed in lieu or
33 forbearance, and a list of the steps the borrower must take in order
34 to be considered for those options. If the servicer has already
35 approved the borrower for another foreclosure alternative,
36 information necessary to participate in or complete the alternative
37 should be included.

38 (H) Instructions regarding how to contact the mortgagee,
39 beneficiary, or authorized agent about the denial.

1 (b) (1) The mortgagee, beneficiary, or authorized agent shall
2 communicate to the borrower in each *written* contact, ~~whether oral~~
3 ~~or written~~, the borrower's deadline for submitting an initial
4 application for a loan modification, which shall not be less than
5 45 days from the borrower's receipt of the notice required by
6 subparagraph (A) of paragraph (1) of subdivision (c) of Section
7 2923.5.

8 (2) If a borrower ~~submits an initial application~~ *initiates an*
9 *application for a loan modification by the deadline described in*
10 *subdivision (c)*, but does not include all the documentation or
11 information the mortgagee, beneficiary, or authorized agent ~~needs~~
12 *requires* in order to consider the borrower for a loan modification,
13 the mortgagee, beneficiary, or authorized agent ~~must~~ *shall* provide
14 the borrower with a written notice that ~~clearly describes~~ *lists* any
15 supplemental documentation or ~~information needed in order to~~
16 ~~consider the borrower for a loan modification~~, *information the*
17 *borrower is required to submit* and the deadline for providing that
18 documentation or information, which shall not be less than 25
19 calendar days from the date the borrower receives the notice.

20 (3) If the mortgagee, beneficiary, or authorized agent is
21 participating in HAMP or is otherwise required to review the
22 borrower's loan under HAMP guidelines, compliance with
23 applicable HAMP guidelines regarding deadlines and timeframes
24 for the borrower to submit and complete a loan modification
25 application shall satisfy the requirements of this subdivision.

26 (c) If a borrower's request for a loan modification is denied,
27 and the mortgagee, beneficiary, or authorized agent sends a denial
28 explanation letter in compliance with subdivision (a), the
29 mortgagee, trustee, beneficiary, or authorized agent may proceed
30 to record a notice of default and declaration of compliance pursuant
31 to Section 2923.7 even if the borrower initiates a dispute relating
32 to the denial and the dispute has not yet been resolved.

33 (d) This section shall not require a mortgagee, beneficiary, or
34 authorized agent to apply any standards in determining a
35 borrower's eligibility or qualification for a loan modification
36 separate from the standards and requirements of the loan
37 modification program or programs utilized by the mortgagee,
38 beneficiary, or authorized agent, and shall not require a mortgagee,
39 beneficiary, or authorized agent to offer or provide a borrower

1 with a loan modification if that borrower does not qualify for a
2 modification under any applicable loan modification program.

3 (e) This section shall not apply if the mortgagee, beneficiary,
4 or authorized agent has no loan modification ~~program~~ *option*
5 available to the borrower, and the mortgagee, beneficiary, or
6 authorized agent informed the borrower of that fact in the written
7 communication required to be sent to the borrower pursuant to
8 subparagraph (B) of paragraph (1) of subdivision (c) of Section
9 2923.5.

10 (f) (1) This section shall not apply if any of the following occurs:

11 (A) The borrower has surrendered the property as evidenced by
12 either a letter confirming the surrender or delivery of the keys to
13 the property to the mortgagee, trustee, beneficiary, or authorized
14 agent.

15 (B) The borrower has contracted with an organization, person,
16 or entity whose primary business is advising people who have
17 decided to leave their homes about how to extend the foreclosure
18 process and avoid their contractual obligations to mortgagees or
19 beneficiaries.

20 (C) A case has been filed by the borrower under Chapter 7, 11,
21 12, or 13 of Title 11 of the United States Code, and the bankruptcy
22 court has not entered an order closing or dismissing the bankruptcy
23 case or granting relief from a stay of foreclosure. This shall not
24 preclude a mortgagee, trustee, beneficiary, or authorized agent
25 from soliciting or considering a borrower who is in bankruptcy
26 for a loan modification, whether under the requirements of HAMP,
27 or under its own proprietary loan modification program.

28 (2) Nothing in this subdivision shall be construed to diminish
29 in any way the obligations of a mortgagee, trustee, beneficiary, or
30 authorized agent that is participating in the HAMP or is otherwise
31 required to review a loan under HAMP guidelines.

32 (g) This section shall apply only to mortgages or deeds of trust
33 that are secured by owner-occupied residential real property
34 containing no more than four dwelling units. For purposes of this
35 subdivision, “owner-occupied” means that the residence is the
36 principal residence of the borrower as indicated to the lender in
37 loan documents.

38 (1) With respect to loans required to be reviewed under HAMP
39 guidelines, this section shall apply only to mortgages or deeds of
40 trust recorded prior to January 1, 2009.

1 (2) With respect to loans not required to be reviewed under
2 HAMP guidelines, this section shall apply only to mortgages or
3 deeds of trust recorded between January 1, 2003, and January 1,
4 2009.

5 (h) This section shall not apply to a grandfathered party, as
6 defined in Section 2923.77.

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

10 ~~SEC. 5.~~

11 *SEC. 6.* Section 2923.75 is added to the Civil Code, to read:

12 2923.75. (a) All of the options available to borrowers under
13 this section are available only subsequent to a trustee sale
14 conducted in accordance with Section 2924f. Any action brought
15 pursuant to this section shall be filed within one year of the date
16 of the trustee sale.

17 (b) *If a borrower is eligible to apply for a loan modification*
18 *and the mortgagee, trustee, beneficiary, or authorized agent either*
19 *records a notice of default in material violation of subdivision (b)*
20 *of Section 2923.5 without completing its evaluation of the*
21 *borrower's timely completed loan modification application or*
22 *without completing the required reasonable borrower solicitation*
23 *efforts and waiting for the borrower's deadline for submitting a*
24 *loan modification application to pass, denies a loan modification*
25 *application for failure to provide required verification documents*
26 *or information after it fails to materially comply with subdivision*
27 *(b) of Section 2923.73, failing to provide the borrower with a*
28 *deadline that complies with subdivision (b) of Section 2923.73 or*
29 *failing to honor that deadline, or fails to send a denial explanation*
30 *letter that materially complies with the requirements of subdivision*
31 *(a) of Section 2923.73, a borrower may pursue any one of the*
32 *following options, as applicable, against the mortgagee, trustee,*
33 *beneficiary, or authorized agent:*

34 (1) If the property at issue is sold to a bona fide purchaser at a
35 trustee sale conducted in accordance with Section 2924f, the
36 borrower may recover the greater of treble actual damages or
37 statutory damages in the amount of ten thousand dollars (\$10,000).

38 (2) If, prior to the initiation of an action under this section, the
39 property at issue is sold to a bona fide purchaser by the foreclosing
40 party subsequent to a trustee sale conducted in accordance with

1 Section 2924f in which title was transferred to the foreclosing
2 party, the borrower may recover the greater of treble actual
3 damages or statutory damages in the amount of ten thousand dollars
4 (\$10,000). If the borrower establishes that the mortgagee, trustee,
5 beneficiary, or authorized agent had actual notice of the borrower's
6 claim under this section prior to selling the property to a bona fide
7 purchaser, the borrower shall be entitled to recover statutory
8 damages in the amount of fifteen thousand dollars (\$15,000), in
9 addition to other damages recoverable under this subparagraph.

10 (3) (A) If title to the property at issue is transferred to the
11 foreclosing party at a trustee sale conducted in accordance with
12 Section 2924f, the borrower may bring an action to both void the
13 foreclosure sale and to obtain an injunction of the type described
14 in subparagraph (B), except if paragraph (2) applies.

15 (B) Pursuant to subparagraph (A), a borrower may seek an
16 injunction requiring the mortgagee, trustee, beneficiary, or
17 authorized agent to comply, at least 30 days prior to recording a
18 *new* notice of sale, with any requirement, not previously satisfied,
19 of subdivision (b) of Section 2923.5 or subdivision (a) or (b) of
20 Section 2923.73, or any similar requirement that the court deems
21 appropriate in the interest of justice. The injunction shall also
22 require the mortgagee, trustee, beneficiary, or authorized agent to
23 file a declaration affirming compliance with the requirements of
24 the injunction together with the notice of sale.

25 (c) A mortgagee, trustee, beneficiary, or authorized agent shall
26 have no civil liability under subdivision (b) if, prior to the initiation
27 of a legal action by the borrower, it satisfies the requirements of
28 either of the following paragraphs no later than 180 days after the
29 date of the trustee sale:

30 (1) The mortgagee, trustee, beneficiary, or authorized agent
31 shall do all of the following:

32 (A) Voluntarily rescind the foreclosure sale prior to filing an
33 unlawful detainer action against the borrower.

34 (B) Within three days of the rescission, send the borrower a
35 written communication informing the borrower of the rescission
36 and ~~clearly explaining~~ *listing* the steps the mortgagee, trustee,
37 beneficiary, or authorized agent will take prior to filing a notice
38 of sale.

39 (C) Materially comply with all the requirements of subdivision
40 (b) of Section 2923.5 or subdivision (a) or (b) of Section 2923.73

1 that were not previously satisfied, and either offer the borrower a
2 loan modification if the borrower qualifies for one, or send the
3 borrower a written communication informing the borrower of the
4 steps that were taken and the outcome, including any reason for
5 the denial of a loan modification, if applicable, at least 30 days
6 before recording a notice of sale.

7 (2) The mortgagee, trustee, beneficiary, or authorized agent
8 shall refrain from filing an unlawful detainer action against the
9 borrower until both of the following requirements have been
10 satisfied:

11 (A) Prior to taking any steps under subparagraph (B) of this
12 paragraph, the mortgagee, trustee, beneficiary, or authorized agent
13 shall send the borrower a written communication informing the
14 ~~borrower that it is not proceeding with an eviction, and clearly~~
15 ~~explain the steps the mortgagee, trustee, beneficiary, or authorized~~
16 ~~agent will take prior to commencing the eviction process. *borrower*~~
17 ~~*that it will not proceed with an eviction until it has completed*~~
18 ~~*certain steps, as set forth in the letter.*~~

19 (B) The mortgagee, trustee, beneficiary, or authorized agent
20 shall materially comply with the requirements of subdivision (b)
21 of Section 2923.5 or subdivision (a) or (b) of Section 2923.73 that
22 were not previously satisfied, and send the borrower a written
23 communication informing the borrower of the steps that were taken
24 and the outcome, including any reason for the denial of a loan
25 modification, if applicable. The mortgagee, trustee, beneficiary,
26 or authorized agent shall wait 30 days after completing those
27 requirements before filing an unlawful detainer action against the
28 borrower. However, if the mortgagee, trustee, beneficiary, or
29 authorized agent determines that the borrower qualifies for a loan
30 modification, it shall rescind the sale and offer the borrower the
31 loan modification.

32 (d) (1) If the mortgagee, trustee, beneficiary, or authorized
33 agent fails to send the written communication required by
34 paragraph (1) of subdivision (c) of Section 2923.5, fails to record
35 a completed declaration of compliance pursuant to subparagraph
36 (B) of paragraph (1) of subdivision (a) of Section 2923.7, or
37 submits a materially false declaration of compliance, a borrower
38 may recover statutory damages of up to ten thousand dollars
39 (\$10,000), but not less than one thousand five hundred dollars

1 (\$1,500), from the mortgagee, trustee, beneficiary, or authorized
2 agent.

3 (2) For purposes of this subdivision, the declaration of
4 compliance shall not be considered false if it lists any incorrect
5 dates for the date that the requirements described in the declaration
6 were completed, unless the mortgagee, beneficiary, or authorized
7 agent knowingly included the wrong date on the declaration.

8 (e) (1) Notwithstanding subdivisions (b) and (c), a borrower
9 shall not have a cause of action under this section for any failure
10 or error that is technical or de minimis in nature.

11 (2) Failure to complete any required section of the declaration
12 of compliance shall not be considered technical or de minimis.

13 (f) 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. 6.~~

17 *SEC. 7.* Section 2923.77 is added to the Civil Code, to read:

18 2923.77. (a) For purposes of this section, a “grandfathered
19 party” shall mean a mortgagee, trustee, beneficiary, or authorized
20 agent that is a credit union as defined in Section 14002 of the
21 Financial Code that has obtained from the commissioner a
22 certificate authorizing it to act as a credit union pursuant to Section
23 14154 of the Financial Code, a credit union organized under the
24 laws of any state, or a federally chartered credit union.

25 (b) A grandfathered party is exempt from the requirements of
26 Sections 2923.5, 2923.7, 2923.73, and 2923.75 and is instead
27 subject to the requirements of this section.

28 (c) (1) A grandfathered party may not file a notice of default
29 pursuant to Section 2924 until 30 days after contact is made as
30 required by paragraph (2) or 30 days after satisfying the due
31 diligence requirements as described in subdivision (h).

32 (2) A grandfathered party shall contact the borrower in person
33 or by telephone in order to assess the borrower’s financial situation
34 and explore options for the borrower to avoid foreclosure. During
35 the initial contact, the grandfathered party shall advise the borrower
36 that he or she has the right to request a subsequent meeting and,
37 if requested, the grandfathered party shall schedule the meeting to
38 occur within 14 days. The assessment of the borrower’s financial
39 situation and discussion of options may occur during the first
40 contact, or at the subsequent meeting scheduled for that purpose.

1 In either case, the borrower shall be provided the toll-free telephone
2 number made available by the United States Department of
3 Housing and Urban Development (HUD) to find a HUD-certified
4 housing counseling agency. Any meeting may occur telephonically.

5 (d) A notice of default filed pursuant to Section 2924 shall
6 include a declaration from the grandfathered party that it has
7 contacted the borrower, tried with due diligence to contact the
8 borrower as required by this section, or the borrower has
9 surrendered the property to the grandfathered party.

10 (e) A grandfathered party's loss mitigation personnel may
11 participate by telephone during any contact required by this section.

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

14 (g) A borrower may designate a HUD-certified housing
15 counseling agency, attorney, or other advisor to discuss with the
16 grandfathered party, on the borrower's behalf, options for the
17 borrower to avoid foreclosure. That contact made at the direction
18 of the borrower shall satisfy the contact requirements of paragraph
19 (2) of subdivision (a). Any loan modification or workout plan
20 offered at the meeting by the grandfathered party is subject to
21 approval by the borrower.

22 (h) A notice of default may be filed pursuant to Section 2924
23 when a grandfathered party has not contacted a borrower as
24 required by paragraph (2) of subdivision (c) provided that the
25 failure to contact the borrower occurred despite the due diligence
26 of the grandfathered party. For purposes of this section, "due
27 diligence" shall require and mean all of the following:

28 (1) A grandfathered party shall first attempt to contact a
29 borrower by sending a first-class letter that includes the toll-free
30 telephone number made available by HUD to find a HUD-certified
31 housing counseling agency.

32 (2) (A) After the letter has been sent, the grandfathered party
33 shall attempt to contact the borrower by telephone at least three
34 times at different hours and on different days. Telephone calls
35 shall be made to the primary telephone number on file.

36 (B) A grandfathered party may attempt to contact a borrower
37 using an automated system to dial borrowers, provided that, if the
38 telephone call is answered, the call is connected to a live
39 representative of the grandfathered party.

1 (C) A grandfathered party satisfies the telephone contact
2 requirements of this paragraph if it determines, after attempting
3 contact pursuant to this paragraph, that the borrower's primary
4 telephone number and secondary telephone number or numbers
5 on file, if any, have been disconnected.

6 (3) If the borrower does not respond within two weeks after the
7 telephone call requirements of paragraph (2) have been satisfied,
8 the grandfathered party shall then send a certified letter, with return
9 receipt requested.

10 (4) The grandfathered party shall provide a means for the
11 borrower to contact it in a timely manner, including a toll-free
12 telephone number that will provide access to a live representative
13 during business hours.

14 (5) The grandfathered party has posted a prominent link on the
15 homepage of its Internet Web site, if any, to the following
16 information:

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

21 (B) A list of financial documents borrowers should collect and
22 be prepared to present to the grandfathered party when discussing
23 options for avoiding foreclosure.

24 (C) A toll-free telephone number for borrowers who wish to
25 discuss options for avoiding foreclosure with the grandfathered
26 party.

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

29 (i) Subdivisions (c) and (h) shall not apply if any of the
30 following occurs:

31 (1) The borrower has surrendered the property as evidenced by
32 either a letter confirming the surrender or delivery of the keys to
33 the property to the grandfathered party.

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

39 (3) The borrower has filed for bankruptcy, and the proceedings
40 have not been finalized.

1 (j) This section shall apply only to loans made from January 1,
2 2003, to December 31, 2007, inclusive, that are secured by
3 residential real property and are for owner-occupied residences.
4 For purposes of this subdivision, “owner-occupied” means that
5 the residence is the principal residence of the borrower.

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

9 ~~SEC. 7.~~

10 *SEC. 8.* Nothing in this act shall affect any cause of action or
11 claim that is pending as of the effective date of this act.

12 ~~SEC. 8.~~

13 *SEC. 9.* The requirements of Sections 2923.4, 2923.7, and
14 2923.73, the amendments to Section 2923.5 made at the 2009–10
15 Regular Session of the Legislature, and the remedies set forth in
16 Section 2923.75, shall not be construed to be retroactive.

17 ~~SEC. 9.~~

18 *SEC. 10.* The provisions of this act are severable. If any
19 provision of this act or its application is held invalid, that invalidity
20 shall not affect other provisions or applications that can be given
21 effect without the invalid provision or application.