

Proposed Conference Report No. 1
June 27, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN SENATE MAY 9, 2011

AMENDED IN SENATE APRIL 6, 2011

SENATE BILL

No. 900

**Introduced by Senators Leno, Evans, Corbett, DeSaulnier, Pavley,
and Steinberg**

(Principal coauthors: Senators Calderon and Hancock)

***(Principal coauthors: Assembly Members Eng, Feuer, Mitchell, Davis,
Carter, Skinner, and John A. Pérez)***

February 18, 2011

An act to amend and add Sections 2923.5 and 2923.6 of, to amend and repeal Section 2924 of, to add Sections 2920.5, 2923.4, 2923.7, 2924.17, and 2924.20 to, to add and repeal Sections 2923.55, 2924.9, 2924.10, 2924.18, and 2924.19 of, and to add, repeal, and add Sections 2924.11, 2924.12, and 2924.15 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 900, as amended, Leno. Mortgages and deeds of trust: foreclosure.

(1) Existing law, until January 1, 2013, requires a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower prior to filing a notice of default to explore options for the borrower to avoid foreclosure, as specified. Existing law requires a notice of default or, in certain circumstances, a notice of sale, to include a declaration stating that the mortgagee, trustee, beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower, or that no contact was required for a specified reason.

This bill would add mortgage servicers, as defined, to these provisions and would extend the operation of these provisions indefinitely, except that it would delete the requirement with respect to a notice of sale. The bill would, until January 1, 2018, additionally require the borrower, as defined, to be provided with specified information in writing prior to recordation of a notice of default and, in certain circumstances, within 5 business days after recordation. The bill would prohibit a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent from recording a notice of default or, until January 1, 2018, recording a notice of sale or conducting a trustee's sale while a complete first lien loan modification application is pending, under specified conditions. The bill would, until January 1, 2018, establish additional procedures to be followed regarding a first lien loan modification application, the denial of an application, and a borrower's right to appeal a denial.

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

The bill would, until January 1, 2018, require a written notice to the borrower after the postponement of a foreclosure sale in order to advise the borrower of any new sale date and time, as specified. The bill would provide that an entity shall not record a notice of default or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the deed of trust, the original or substituted trustee, or the designated agent of the holder of the beneficial interest, as specified.

The bill would prohibit recordation of a notice of default or a notice of sale or the conduct of a trustee's sale if a foreclosure prevention alternative has been approved and certain conditions exist and would, until January 1, 2018, require recordation of a rescission of those notices upon execution of a permanent foreclosure prevention alternative. The bill would until January 1, 2018, prohibit the collection of application fees and the collection of late fees while a foreclosure prevention alternative is being considered, if certain criteria are met, and would require a subsequent mortgage servicer to honor any previously approved foreclosure prevention alternative.

The bill would authorize a borrower to seek an injunction and damages for violations of certain of the provisions described above, except as specified. The bill would authorize the greater of treble actual damages or \$50,000 in statutory damages if a violation of certain provisions is found to be intentional or reckless or resulted from willful

misconduct, as specified. The bill would authorize the awarding of attorneys' fees for prevailing borrowers, as specified. Violations of these provisions by licensees of the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate would also be violations of those respective licensing laws. Because a violation of certain of those licensing laws is a crime, the bill would impose a state-mandated local program.

The bill would provide that the requirements imposed on mortgage servicers, and mortgagees, trustees, beneficiaries, and authorized agents, described above are applicable only to mortgages or deeds of trust secured by residential real property not exceeding 4 dwelling units that is owner-occupied, as defined, and, until January 1, 2018, only to those entities who conduct more than 175 foreclosure sales per year or annual reporting period, except as specified.

The bill would require, upon request from a borrower who requests a foreclosure prevention alternative, a mortgage servicer who conducts more than 175 foreclosure sales per year or annual reporting period to establish a single point of contact and provide the borrower with one or more direct means of communication with the single point of contact. The bill would specify various responsibilities of the single point of contact. The bill would define single point of contact for these purposes.

(3) Existing law prescribes documents that may be recorded or filed in court.

This bill would require that a specified declaration, notice of default, notice of sale, deed of trust, assignment of a deed of trust, substitution of trustee, or declaration or affidavit filed in any court relative to a foreclosure proceeding or recorded by or on behalf of a mortgage servicer shall be accurate and complete and supported by competent and reliable evidence. The bill would require that before recording or filing any of those documents, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information. The bill would until January 1, 2018, provide that any mortgage servicer that engages in multiple and repeated violations of these requirements shall be liable for a civil penalty of up to \$7,500 per mortgage or deed of trust, in an action brought by specified state and local government entities, and would also authorize administrative enforcement against licensees of the

Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate.

The bill would authorize the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate to adopt regulations applicable to persons and entities under their respective jurisdictions for purposes of the provisions described above. The bill would provide that a violation of those regulations would be enforceable only by the regulating agency.

(4) The bill would state finding and declarations of the Legislature in relation to foreclosures in the state generally, and would state the purposes of the bill.

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

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

~~Existing law generally regulates mortgages and deeds of trust, including establishing procedures for foreclosure in the case of default.~~

~~This bill would express the intent of Legislature to enact legislation to amend the state’s foreclosure laws to implement and make permanent the servicing standards and other provisions of the National Mortgage Settlement.~~

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

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 still reeling from the economic impacts of a*
 4 *wave of residential property foreclosures that began in 2007. From*
 5 *2007 to 2011 alone, there were over 900,000 completed foreclosure*
 6 *sales. In 2011, 38 of the top 100 hardest hit ZIP Codes in the nation*
 7 *were in California, and the current wave of foreclosures continues*
 8 *apace. All of this foreclosure activity has adversely affected*
 9 *property values and resulted in less money for schools, public*
 10 *safety, and other public services. In addition, according to the*
 11 *Urban Institute, every foreclosure imposes significant costs on*
 12 *local governments, including an estimated nineteen thousand two*

1 *hundred twenty-nine dollars (\$19,229) in local government costs.*
2 *And the foreclosure crisis is not over; there remain more than two*
3 *million “underwater” mortgages in California.*

4 *(b) It is essential to the economic health of this state to mitigate*
5 *the negative effects on the state and local economies and the*
6 *housing market that are the result of continued foreclosures by*
7 *modifying the foreclosure process to ensure that borrowers who*
8 *may qualify for a foreclosure alternative are considered for, and*
9 *have a meaningful opportunity to obtain, available loss mitigation*
10 *options. These changes to the state’s foreclosure process are*
11 *essential to ensure that the current crisis is not worsened by*
12 *unnecessarily adding foreclosed properties to the market when an*
13 *alternative to foreclosure may be available. Avoiding foreclosure,*
14 *where possible, will help stabilize the state’s housing market and*
15 *avoid the substantial, corresponding negative effects of*
16 *foreclosures on families, communities, and the state and local*
17 *economy.*

18 *(c) This act is necessary to provide stability to California’s*
19 *statewide and regional economies and housing market by*
20 *facilitating opportunities for borrowers to pursue loss mitigation*
21 *options.*

22 *SEC. 2. Section 2920.5 is added to the Civil Code, to read:*

23 *2920.5. For purposes of this article, the following definitions*
24 *apply:*

25 *(a) “Mortgage servicer” means a person or entity who directly*
26 *services a loan, or who is responsible for interacting with the*
27 *borrower, managing the loan account on a daily basis including*
28 *collecting and crediting periodic loan payments, managing any*
29 *escrow account, or enforcing the note and security instrument,*
30 *either as the current owner of the promissory note or as the current*
31 *owner’s authorized agent. “Mortgage servicer” also means a*
32 *subservicing agent to a master servicer by contract. “Mortgage*
33 *servicer” shall not include a trustee, or a trustee’s authorized*
34 *agent, acting under a power of sale pursuant to a deed of trust.*

35 *(b) “Foreclosure prevention alternative” means a first lien loan*
36 *modification or another available loss mitigation option.*

37 *(c) (1) Unless otherwise provided and for purposes of Sections*
38 *2923.4, 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11,*
39 *2924.18, and 2924.19, “borrower” means any natural person who*
40 *is a mortgagor or trustor and who is potentially eligible for any*

1 *federal, state, or proprietary foreclosure prevention alternative*
2 *program offered by, or through, his or her mortgage servicer.*

3 (2) *For purposes of the sections listed in paragraph (1),*
4 *“borrower” shall not include any of the following:*

5 (A) *An individual who has surrendered the secured property as*
6 *evidenced by either a letter confirming the surrender or delivery*
7 *of the keys to the property to the mortgagee, trustee, beneficiary,*
8 *or authorized agent.*

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

14 (C) *An individual who has filed a case under Chapter 7, 11, 12,*
15 *or 13 of Title 11 of the United States Code and the bankruptcy*
16 *court has not entered an order closing or dismissing the bankruptcy*
17 *case, or granting relief from a stay of foreclosure.*

18 (d) *“First lien” means the most senior mortgage or deed of*
19 *trust on the property that is the subject of the notice of default or*
20 *notice of sale.*

21 *SEC. 3. Section 2923.4 is added to the Civil Code, to read:*

22 2923.4. (a) *The purpose of the act that added this section is*
23 *to ensure that, as part of the nonjudicial foreclosure process,*
24 *borrowers are considered for, and have a meaningful opportunity*
25 *to obtain, available loss mitigation options, if any, offered by or*
26 *through the borrower’s mortgage servicer, such as loan*
27 *modifications or other alternatives to foreclosure. Nothing in the*
28 *act that added this section, however, shall be interpreted to require*
29 *a particular result of that process.*

30 (b) *Nothing in this article obviates or supersedes the obligations*
31 *of the signatories to the consent judgment entered in the case*
32 *entitled United States of America et al. v. Bank of America*
33 *Corporation et al., filed in the United States District Court for the*
34 *District of Columbia, case number 1:12-cv-00361 RMC.*

35 *SEC. 4. Section 2923.5 of the Civil Code is amended to read:*

36 2923.5. (a) (1) *A mortgage servicer, mortgagee, trustee,*
37 *beneficiary, or authorized agent may not file record a notice of*
38 *default pursuant to Section 2924 until both of the following:*

1 (A) *Either 30 days after initial contact is made as required by*
2 *paragraph (2) or 30 days after satisfying the due diligence*
3 *requirements as described in subdivision (g): (e).*

4 (B) *The mortgage servicer complies with paragraph (1) of*
5 *subdivision (a) of Section 2924.18, if the borrower has provided*
6 *a complete application as defined in subdivision (d) of Section*
7 *2924.18.*

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

24 (b) ~~A notice of default filed recorded pursuant to Section 2924~~
25 ~~shall include a declaration that the mortgagee, beneficiary, or~~
26 ~~authorized agent mortgage servicer has contacted the borrower,~~
27 ~~has tried with due diligence to contact the borrower as required~~
28 ~~by this section, or that no contact was required because the~~
29 ~~individual did not meet the definition of "borrower" pursuant to~~
30 ~~subdivision (h) (c) of Section 2920.5.~~

31 (e) ~~If a mortgagee, trustee, beneficiary, or authorized agent had~~
32 ~~already filed the notice of default prior to the enactment of this~~
33 ~~section and did not subsequently file a notice of rescission, then~~
34 ~~the mortgagee, trustee, beneficiary, or authorized agent shall, as~~
35 ~~part of the notice of sale filed pursuant to Section 2924f, include~~
36 ~~a declaration that either:~~

37 (1) ~~States that the borrower was contacted to assess the~~
38 ~~borrower's financial situation and to explore options for the~~
39 ~~borrower to avoid foreclosure.~~

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

3 ~~(d)~~

4 ~~(c) A mortgagee’s, beneficiary’s, or authorized agent’s mortgage~~
5 ~~servicer’s loss mitigation personnel may participate by telephone~~
6 ~~during any contact required by this section.~~

7 ~~(e) For purposes of this section, a “borrower” shall include a~~
8 ~~mortgagor or trustor.~~

9 ~~(f)~~

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

20 ~~(g)~~

21 ~~(e) A notice of default may be filed recorded pursuant to Section~~
22 ~~2924 when a mortgagee, beneficiary, or authorized agent mortgage~~
23 ~~servicer has not contacted a borrower as required by paragraph~~
24 ~~(2) of subdivision (a) provided that the failure to contact the~~
25 ~~borrower occurred despite the due diligence of the mortgagee,~~
26 ~~beneficiary, or authorized agent mortgage servicer. For purposes~~
27 ~~of this section, “due diligence” shall require and mean all of the~~
28 ~~following:~~

29 ~~(1) A mortgagee, beneficiary, or authorized agent mortgage~~
30 ~~servicer shall first attempt to contact a borrower by sending a~~
31 ~~first-class letter that includes the toll-free telephone number made~~
32 ~~available by HUD to find a HUD-certified housing counseling~~
33 ~~agency.~~

34 ~~(2) (A) After the letter has been sent, the mortgagee,~~
35 ~~beneficiary, or authorized agent mortgage servicer shall attempt~~
36 ~~to contact the borrower by telephone at least three times at different~~
37 ~~hours and on different days. Telephone calls shall be made to the~~
38 ~~primary telephone number on file.~~

39 ~~(B) A mortgagee, beneficiary, or authorized agent mortgage~~
40 ~~servicer may attempt to contact a borrower using an automated~~

1 system to dial borrowers, provided that, if the telephone call is
2 answered, the call is connected to a live representative of the
3 ~~mortgagee, beneficiary, or authorized agent~~ *mortgage servicer*.

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

10 (3) If the borrower does not respond within two weeks after the
11 telephone call requirements of paragraph (2) have been satisfied,
12 ~~the mortgagee, beneficiary, or authorized agent~~ *mortgage servicer*
13 shall then send a certified letter, with return receipt requested.

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

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

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

25 (B) A list of financial documents borrowers should collect and
26 be prepared to present to the ~~mortgagee, beneficiary, or authorized~~
27 ~~agent~~ *mortgage servicer* when discussing options for avoiding
28 foreclosure.

29 (C) A toll-free telephone number for borrowers who wish to
30 discuss options for avoiding foreclosure with their ~~mortgagee,~~
31 ~~beneficiary, or authorized agent~~ *mortgage servicer*.

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

34 (h) ~~Subdivisions (a), (e), and (g) shall not apply if any of the~~
35 ~~following occurs:~~

36 (1) ~~The borrower has surrendered the property as evidenced by~~
37 ~~either a letter confirming the surrender or delivery of the keys to~~
38 ~~the property to the mortgagee, trustee, beneficiary, or authorized~~
39 ~~agent.~~

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

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

10 ~~(i)~~

11 ~~(f) This section shall apply only to mortgages or deeds of trust~~
 12 ~~recorded from January 1, 2003, to December 31, 2007, inclusive,~~
 13 ~~that are secured by owner-occupied residential real property~~
 14 ~~containing no more than four dwelling units. For purposes of this~~
 15 ~~subdivision, “owner-occupied” means that the residence is the~~
 16 ~~principal residence of the borrower as indicated to the lender~~
 17 ~~described in loan documents Section 2924.15.~~

18 ~~(g) This section shall apply only to entities described in~~
 19 ~~subdivision (b) of Section 2924.18.~~

20 ~~(j)~~

21 ~~(h) This section shall remain in effect only until January 1, 2013,~~
 22 ~~2018, and as of that date is repealed, unless a later enacted statute,~~
 23 ~~that is enacted before January 1, 2013, 2018, deletes or extends~~
 24 ~~that date.~~

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

26 *2923.5. (a) (1) A mortgage servicer, mortgagee, trustee,*
 27 *beneficiary, or authorized agent may not record a notice of default*
 28 *pursuant to Section 2924 until both of the following:*

29 *(A) Either 30 days after initial contact is made as required by*
 30 *paragraph (2) or 30 days after satisfying the due diligence*
 31 *requirements as described in subdivision (e).*

32 *(B) The mortgage servicer complies with subdivision (a) of*
 33 *Section 2924.11, if the borrower has provided a complete*
 34 *application as defined in subdivision (f) of Section 2924.11.*

35 *(2) A mortgage servicer shall contact the borrower in person*
 36 *or by telephone in order to assess the borrower’s financial situation*
 37 *and explore options for the borrower to avoid foreclosure. During*
 38 *the initial contact, the mortgage servicer shall advise the borrower*
 39 *that he or she has the right to request a subsequent meeting and,*
 40 *if requested, the mortgage servicer shall schedule the meeting to*

1 occur within 14 days. The assessment of the borrower’s financial
2 situation and discussion of options may occur during the first
3 contact, or at the subsequent meeting scheduled for that purpose.
4 In either case, the borrower shall be provided the toll-free
5 telephone number made available by the United States Department
6 of Housing and Urban Development (HUD) to find a
7 HUD-certified housing counseling agency. Any meeting may occur
8 telephonically.

9 (b) A notice of default recorded pursuant to Section 2924 shall
10 include a declaration that the mortgage servicer has contacted
11 the borrower, has tried with due diligence to contact the borrower
12 as required by this section, or that no contact was required because
13 the individual did not meet the definition of “borrower” pursuant
14 to subdivision (c) of Section 2920.5.

15 (c) A mortgage servicer’s loss mitigation personnel may
16 participate by telephone during any contact required by this
17 section.

18 (d) A borrower may designate, with consent given in writing, a
19 HUD-certified housing counseling agency, attorney, or other
20 advisor to discuss with the mortgage servicer, on the borrower’s
21 behalf, the borrower’s financial situation and options for the
22 borrower to avoid foreclosure. That contact made at the direction
23 of the borrower shall satisfy the contact requirements of paragraph
24 (2) of subdivision (a). Any loan modification or workout plan
25 offered at the meeting by the mortgage servicer is subject to
26 approval by the borrower.

27 (e) A notice of default may be recorded pursuant to Section
28 2924 when a mortgage servicer has not contacted a borrower as
29 required by paragraph (2) of subdivision (a) provided that the
30 failure to contact the borrower occurred despite the due diligence
31 of the mortgage servicer. For purposes of this section, “due
32 diligence” shall require and mean all of the following:

33 (1) A mortgage servicer shall first attempt to contact a borrower
34 by sending a first-class letter that includes the toll-free telephone
35 number made available by HUD to find a HUD-certified housing
36 counseling agency.

37 (2) (A) After the letter has been sent, the mortgage servicer
38 shall attempt to contact the borrower by telephone at least three
39 times at different hours and on different days. Telephone calls
40 shall be made to the primary telephone number on file.

1 (B) A mortgage servicer may attempt to contact a borrower
2 using an automated system to dial borrowers, provided that, if the
3 telephone call is answered, the call is connected to a live
4 representative of the mortgage servicer.

5 (C) A mortgage servicer satisfies the telephone contact
6 requirements of this paragraph if it determines, after attempting
7 contact pursuant to this paragraph, that the borrower’s primary
8 telephone number and secondary telephone number or numbers
9 on file, if any, have been disconnected.

10 (3) If the borrower does not respond within two weeks after the
11 telephone call requirements of paragraph (2) have been satisfied,
12 the mortgage servicer shall then send a certified letter, with return
13 receipt requested.

14 (4) The mortgage servicer shall provide a means for the
15 borrower to contact it in a timely manner, including a toll-free
16 telephone number that will provide access to a live representative
17 during business hours.

18 (5) The mortgage servicer has posted a prominent link on the
19 homepage of its Internet Web site, if any, to the following
20 information:

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

25 (B) A list of financial documents borrowers should collect and
26 be prepared to present to the mortgage servicer when discussing
27 options for avoiding foreclosure.

28 (C) A toll-free telephone number for borrowers who wish to
29 discuss options for avoiding foreclosure with their mortgage
30 servicer.

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

33 (f) This section shall apply only to mortgages or deeds of trust
34 described in Section 2924.15.

35 (g) This section shall become operative on January 1, 2018.

36 SEC. 6. Section 2923.55 is added to the Civil Code, to read:
37 2923.55. (a) A mortgage servicer, mortgagee, trustee,
38 beneficiary, or authorized agent may not record a notice of default
39 pursuant to Section 2924 until all of the following:

1 (1) *The mortgage servicer has satisfied the requirements of*
2 *paragraph (1) of subdivision (b).*
3 (2) *Either 30 days after initial contact is made as required by*
4 *paragraph (2) of subdivision (b) or 30 days after satisfying the*
5 *due diligence requirements as described in subdivision (f).*
6 (3) *The mortgage servicer complies with subdivision (c) of*
7 *Section 2923.6, if the borrower has provided a complete*
8 *application as defined in subdivision (h) of Section 2923.6.*
9 (b) (1) *As specified in subdivision (a), a mortgage servicer shall*
10 *send the following information in writing to the borrower:*
11 (A) *A statement that if the borrower is a servicemember or a*
12 *dependent of a servicemember, he or she may be entitled to certain*
13 *protections under the federal Servicemembers Civil Relief Act (50*
14 *U.S.C. Sec. 501 et seq.) regarding the servicemember’s interest*
15 *rate and the risk of foreclosure, and counseling for covered*
16 *servicemembers that is available at agencies such as Military*
17 *OneSource and Armed Forces Legal Assistance.*
18 (B) *A statement that the borrower may request the following:*
19 (i) *A copy of the borrower’s promissory note or other evidence*
20 *of indebtedness.*
21 (ii) *A copy of the borrower’s deed of trust or mortgage.*
22 (iii) *A copy of any assignment, if applicable, of the borrower’s*
23 *mortgage or deed of trust required to demonstrate the right of the*
24 *mortgage servicer to foreclose.*
25 (iv) *A copy of the borrower’s payment history since the borrower*
26 *was last less than 60 days past due.*
27 (2) *A mortgage servicer shall contact the borrower in person*
28 *or by telephone in order to assess the borrower’s financial situation*
29 *and explore options for the borrower to avoid foreclosure. During*
30 *the initial contact, the mortgage servicer shall advise the borrower*
31 *that he or she has the right to request a subsequent meeting and,*
32 *if requested, the mortgage servicer shall schedule the meeting to*
33 *occur within 14 days. The assessment of the borrower’s financial*
34 *situation and discussion of options may occur during the first*
35 *contact, or at the subsequent meeting scheduled for that purpose.*
36 *In either case, the borrower shall be provided the toll-free*
37 *telephone number made available by the United States Department*
38 *of Housing and Urban Development (HUD) to find a*
39 *HUD-certified housing counseling agency. Any meeting may occur*
40 *telephonically.*

1 (c) A notice of default recorded pursuant to Section 2924 shall
2 include a declaration that the mortgage servicer has contacted
3 the borrower, has tried with due diligence to contact the borrower
4 as required by this section, or that no contact was required because
5 the individual did not meet the definition of “borrower” pursuant
6 to subdivision (c) of Section 2920.5.

7 (d) A mortgage servicer’s loss mitigation personnel may
8 participate by telephone during any contact required by this
9 section.

10 (e) A borrower may designate, with consent given in writing, a
11 HUD-certified housing counseling agency, attorney, or other
12 advisor to discuss with the mortgage servicer, on the borrower’s
13 behalf, the borrower’s financial situation and options for the
14 borrower to avoid foreclosure. That contact made at the direction
15 of the borrower shall satisfy the contact requirements of paragraph
16 (2) of subdivision (b). Any foreclosure prevention alternative
17 offered at the meeting by the mortgage servicer is subject to
18 approval by the borrower.

19 (f) A notice of default may be recorded pursuant to Section 2924
20 when a mortgage servicer has not contacted a borrower as
21 required by paragraph (2) of subdivision (b), provided that the
22 failure to contact the borrower occurred despite the due diligence
23 of the mortgage servicer. For purposes of this section, “due
24 diligence” shall require and mean all of the following:

25 (1) A mortgage servicer shall first attempt to contact a borrower
26 by sending a first-class letter that includes the toll-free telephone
27 number made available by HUD to find a HUD-certified housing
28 counseling agency.

29 (2) (A) After the letter has been sent, the mortgage servicer shall
30 attempt to contact the borrower by telephone at least three times
31 at different hours and on different days. Telephone calls shall be
32 made to the primary telephone number on file.

33 (B) A mortgage servicer may attempt to contact a borrower
34 using an automated system to dial borrowers, provided that, if the
35 telephone call is answered, the call is connected to a live
36 representative of the mortgage servicer.

37 (C) A mortgage servicer satisfies the telephone contact
38 requirements of this paragraph if it determines, after attempting
39 contact pursuant to this paragraph, that the borrower’s primary

1 telephone number and secondary telephone number or numbers
2 on file, if any, have been disconnected.

3 (3) If the borrower does not respond within two weeks after the
4 telephone call requirements of paragraph (2) have been satisfied,
5 the mortgage servicer shall then send a certified letter, with return
6 receipt requested, that includes the toll-free telephone number
7 made available by HUD to find a HUD-certified housing
8 counseling agency.

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

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

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

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

23 (C) A toll-free telephone number for borrowers who wish to
24 discuss options for avoiding foreclosure with their mortgage
25 servicer.

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

28 (g) This section shall not apply to entities described in
29 subdivision (b) of Section 2924.18.

30 (h) This section shall apply only to mortgages or deeds of trust
31 described in Section 2924.15.

32 (i) This section shall remain in effect only until January 1,
33 2018, and as of that date is repealed, unless a later enacted statute,
34 that is enacted before January 1, 2018, deletes or extends that
35 date.

36 SEC. 7. Section 2923.6 of the Civil Code is amended to read:

37 2923.6. (a) The Legislature finds and declares that any duty
38 that mortgage servicers may have to maximize net present value
39 under their pooling and servicing agreements is owed to all parties
40 in a loan pool, or to all investors under a pooling and servicing

1 agreement, not to any particular party in the loan pool or investor
2 under a ~~pooling~~ *pooling* and servicing agreement, and that a
3 *mortgage servicer* acts in the best interests of all parties to the loan
4 pool or investors in the pooling and servicing agreement if it agrees
5 to or implements a loan modification or workout plan for which
6 both of the following apply:

7 (1) The loan is in payment default, or payment default is
8 reasonably foreseeable.

9 (2) Anticipated recovery under the loan modification or workout
10 plan exceeds the anticipated recovery through foreclosure on a net
11 present value basis.

12 (b) It is the intent of the Legislature that the ~~mortgagee,~~
13 ~~beneficiary, or authorized agent~~ *mortgage servicer* offer the
14 borrower a loan modification or workout plan if such a
15 modification or plan is consistent with its contractual or other
16 authority.

17 (c) *If a borrower submits a complete application for a first lien*
18 *loan modification offered by, or through, the borrower's mortgage*
19 *servicer, a mortgage servicer, mortgagee, trustee, beneficiary, or*
20 *authorized agent shall not record a notice of default or notice of*
21 *sale, or conduct a trustee's sale, while the complete first lien loan*
22 *modification application is pending. A mortgage servicer,*
23 *mortgagee, trustee, beneficiary, or authorized agent shall not*
24 *record a notice of default or notice of sale or conduct a trustee's*
25 *sale until any of the following occurs:*

26 (1) *The mortgage servicer makes a written determination that*
27 *the borrower is not eligible for a first lien loan modification, and*
28 *any appeal period pursuant to subdivision (d) has expired.*

29 (2) *The borrower does not accept an offered first lien loan*
30 *modification within 14 days of the offer.*

31 (3) *The borrower accepts a written first lien loan modification,*
32 *but defaults on, or otherwise breaches the borrower's obligations*
33 *under, the first lien loan modification.*

34 (d) *If the borrower's application for a first lien loan modification*
35 *is denied, the borrower shall have at least 30 days from the date*
36 *of the written denial to appeal the denial and to provide evidence*
37 *that the mortgage servicer's determination was in error.*

38 (e) *If the borrower's application for a first lien loan modification*
39 *is denied, the mortgage servicer, mortgagee, trustee, beneficiary,*
40 *or authorized agent shall not record a notice of default or, if a*

1 notice of default has already been recorded, record a notice of
2 sale or conduct a trustee's sale until the later of:

3 (1) Thirty-one days after the borrower is notified in writing of
4 the denial.

5 (2) If the borrower appeals the denial pursuant to subdivision
6 (d), the later of 15 days after the denial of the appeal or 14 days
7 after a first lien loan modification is offered after appeal but
8 declined by the borrower, or, if a first lien loan modification is
9 offered and accepted after appeal, the date on which the borrower
10 fails to timely submit the first payment or otherwise breaches the
11 terms of the offer.

12 (f) Following the denial of a first lien loan modification
13 application, the mortgage servicer shall send a written notice to
14 the borrower identifying the reasons for denial, including the
15 following:

16 (1) The amount of time from the date of the denial letter in which
17 the borrower may request an appeal of the denial of the first lien
18 loan modification and instructions regarding how to appeal the
19 denial.

20 (2) If the denial was based on investor disallowance, the specific
21 reasons for the investor disallowance.

22 (3) If the denial is the result of a net present value calculation,
23 the monthly gross income and property value used to calculate the
24 net present value and a statement that the borrower may obtain
25 all of the inputs used in the net present value calculation upon
26 written request to the mortgage servicer.

27 (4) If applicable, a finding that the borrower was previously
28 offered a first lien loan modification and failed to successfully
29 make payments under the terms of the modified loan.

30 (5) If applicable, a description of other foreclosure prevention
31 alternatives for which the borrower may be eligible, and a list of
32 the steps the borrower must take in order to be considered for
33 those options. If the mortgage servicer has already approved the
34 borrower for another foreclosure prevention alternative,
35 information necessary to complete the foreclosure prevention
36 alternative.

37 (g) In order to minimize the risk of borrowers submitting
38 multiple applications for first lien loan modifications for the
39 purpose of delay, the mortgage servicer shall not be obligated to
40 evaluate applications from borrowers who have already been

1 *evaluated or afforded a fair opportunity to be evaluated for a first*
 2 *lien loan modification prior to January 1, 2013, or who have been*
 3 *evaluated or afforded a fair opportunity to be evaluated consistent*
 4 *with the requirements of this section, unless there has been a*
 5 *material change in the borrower’s financial circumstances since*
 6 *the date of the borrower’s previous application and that change*
 7 *is documented by the borrower and submitted to the mortgage*
 8 *servicer.*

9 *(h) For purposes of this section, an application shall be deemed*
 10 *“complete” when a borrower has supplied the mortgage servicer*
 11 *with all documents required by the mortgage servicer within the*
 12 *reasonable timeframes specified by the mortgage servicer.*

13 *(i) Subdivisions (c) to (h), inclusive, shall not apply to entities*
 14 *described in subdivision (b) of Section 2924.18.*

15 *(j) This section shall apply only to mortgages or deeds of trust*
 16 *described in Section 2924.15.*

17 ~~(e)~~

18 *(k) This section shall remain in effect only until January 1,*
 19 *2013, 2018, and as of that date is repealed, unless a later enacted*
 20 *statute, that is enacted before January 1, 2013, 2018, deletes or*
 21 *extends that date.*

22 *SEC. 8. Section 2923.6 is added to the Civil Code, to read:*

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

33 *(1) The loan is in payment default, or payment default is*
 34 *reasonably foreseeable.*

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

38 *(b) It is the intent of the Legislature that the mortgage servicer*
 39 *offer the borrower a loan modification or workout plan if such a*

1 *modification or plan is consistent with its contractual or other*
2 *authority.*

3 *(c) This section shall become operative on January 1, 2018.*

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

5 *2923.7. (a) Upon request from a borrower who requests a*
6 *foreclosure prevention alternative, the mortgage servicer shall*
7 *promptly establish a single point of contact and provide to the*
8 *borrower one or more direct means of communication with the*
9 *single point of contact.*

10 *(b) The single point of contact shall be responsible for doing*
11 *all of the following:*

12 *(1) Communicating the process by which a borrower may apply*
13 *for an available foreclosure prevention alternative and the deadline*
14 *for any required submissions to be considered for these options.*

15 *(2) Coordinating receipt of all documents associated with*
16 *available foreclosure prevention alternatives and notifying the*
17 *borrower of any missing documents necessary to complete the*
18 *application.*

19 *(3) Having access to current information and personnel*
20 *sufficient to timely, accurately, and adequately inform the borrower*
21 *of the current status of the foreclosure prevention alternative.*

22 *(4) Ensuring that a borrower is considered for all foreclosure*
23 *prevention alternatives offered by, or through, the mortgage*
24 *servicer, if any.*

25 *(5) Having access to individuals with the ability and authority*
26 *to stop foreclosure proceedings when necessary.*

27 *(c) The single point of contact shall remain assigned to the*
28 *borrower's account until the mortgage servicer determines that*
29 *all loss mitigation options offered by, or through, the mortgage*
30 *servicer have been exhausted or the borrower's account becomes*
31 *current.*

32 *(d) The mortgage servicer shall ensure that a single point of*
33 *contact refers and transfers a borrower to an appropriate*
34 *supervisor upon request of the borrower, if the single point of*
35 *contact has a supervisor.*

36 *(e) For purposes of this section, "single point of contact" means*
37 *an individual or team of personnel each of whom has the ability*
38 *and authority to perform the responsibilities described in*
39 *subdivisions (b) to (d), inclusive. The mortgage servicer shall*
40 *ensure that each member of the team is knowledgeable about the*

1 borrower's situation and current status in the alternatives to
2 foreclosure process.

3 (f) This section shall apply only to mortgages or deeds of trust
4 described in Section 2924.15.

5 (g) (1) This section shall not apply to a depository institution
6 chartered under state or federal law, a person licensed pursuant
7 to Division 9 (commencing with Section 22000) or Division 20
8 (commencing with Section 50000) of the Financial Code, or a
9 person licensed pursuant to Part 1 (commencing with Section
10 (10000) of Division 4 of the Business and Professions Code, that,
11 during its immediately preceding annual reporting period, as
12 established with its primary regulator, foreclosed on 175 or fewer
13 residential real properties, containing no more than four dwelling
14 units, that are located in California.

15 (2) Within three months after the close of any calendar year or
16 annual reporting period as established with its primary regulator
17 during which an entity or person described in paragraph (1)
18 exceeds the threshold of 175 specified in paragraph (1), that entity
19 shall notify its primary regulator, in a manner acceptable to its
20 primary regulator, and any mortgagor or trustor who is delinquent
21 on a residential mortgage loan serviced by that entity of the date
22 on which that entity will be subject to this section, which date shall
23 be the first day of the first month that is six months after the close
24 of the calendar year or annual reporting period during which that
25 entity exceeded the threshold.

26 SEC. 10. Section 2924 of the Civil Code, as amended by Section
27 1 of Chapter 180 of the Statutes of 2010, is amended to read:

28 2924. (a) Every transfer of an interest in property, other than
29 in trust, made only as a security for the performance of another
30 act, is to be deemed a mortgage, except when in the case of
31 personal property it is accompanied by actual change of possession,
32 in which case it is to be deemed a pledge. Where, by a mortgage
33 created after July 27, 1917, of any estate in real property, other
34 than an estate at will or for years, less than two, or in any transfer
35 in trust made after July 27, 1917, of a like estate to secure the
36 performance of an obligation, a power of sale is conferred upon
37 the mortgagee, trustee, or any other person, to be exercised after
38 a breach of the obligation for which that mortgage or transfer is a
39 security, the power shall not be exercised except where the
40 mortgage or transfer is made pursuant to an order, judgment, or

1 decree of a court of record, or to secure the payment of bonds or
2 other evidences of indebtedness authorized or permitted to be
3 issued by the Commissioner of Corporations, or is made by a public
4 utility subject to the provisions of the Public Utilities Act, until
5 all of the following apply:

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

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

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

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

23 (D) If the default is curable pursuant to Section 2924c, the
24 statement specified in paragraph (1) of subdivision (b) of Section
25 2924c.

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

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

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

39 (5) *Until January 1, 2018, whenever a sale is postponed for a*
40 *period of at least 10 business days pursuant to Section 2924g, a*

1 mortgagee, beneficiary, or authorized agent shall provide written
2 notice to a borrower regarding the new sale date and time, within
3 five business days following the postponement. Information
4 provided pursuant to this paragraph shall not constitute the public
5 declaration required by subdivision (d) of Section 2924g. Failure
6 to comply with this paragraph shall not invalidate any sale that
7 would otherwise be valid under Section 2924f. This paragraph
8 shall be inoperative on January 1, 2018.

9 (6) No entity shall record or cause a notice of default to be
10 recorded or otherwise initiate the foreclosure process unless it is
11 the holder of the beneficial interest under the mortgage or deed
12 of trust, the original trustee or the substituted trustee under the
13 deed of trust, or the designated agent of the holder of the beneficial
14 interest. No agent of the holder of the beneficial interest under the
15 mortgage or deed of trust, original trustee or substituted trustee
16 under the deed of trust may record a notice of default or otherwise
17 commence the foreclosure process except when acting within the
18 scope of authority designated by the holder of the beneficial
19 interest.

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

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

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

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

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

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

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

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

13 *SEC. 11. Section 2924 of the Civil Code, as amended by Section*
14 *2 of Chapter 180 of the Statutes of 2010, is repealed.*

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

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

38 ~~(A) A statement identifying the mortgage or deed of trust by~~
39 ~~stating the name or names of the trustor or trustors and giving the~~
40 ~~book and page, or instrument number, if applicable, where the~~

1 mortgage or deed of trust is recorded or a description of the
2 mortgaged or trust property.

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

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

10 (D) If the default is curable pursuant to Section 2924e, the
11 statement specified in paragraph (1) of subdivision (b) of Section
12 2924e.

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

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

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

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

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

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

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

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

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

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

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

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

20 *SEC. 12. Section 2924.9 is added to the Civil Code, to read:*

21 *2924.9. (a) Unless a borrower has previously exhausted the*
22 *first lien loan modification process offered by, or through, his or*
23 *her mortgage servicer described in Section 2923.6, within five*
24 *business days after recording a notice of default pursuant to*
25 *Section 2924, a mortgage servicer that offers one or more*
26 *foreclosure prevention alternatives shall send a written*
27 *communication to the borrower that includes all of the following*
28 *information:*

29 *(1) That the borrower may be evaluated for a foreclosure*
30 *prevention alternative or, if applicable, foreclosure prevention*
31 *alternatives.*

32 *(2) Whether an application is required to be submitted by the*
33 *borrower in order to be considered for a foreclosure prevention*
34 *alternative.*

35 *(3) The means and process by which a borrower may obtain an*
36 *application for a foreclosure prevention alternative.*

37 *(b) This section shall not apply to entities described in*
38 *subdivision (b) of Section 2924.18.*

39 *(c) This section shall apply only to mortgages or deeds of trust*
40 *described in Section 2924.15.*

1 (d) This section shall remain in effect only until January 1,
2 2018, and as of that date is repealed, unless a later enacted statute,
3 that is enacted before January 1, 2018, deletes or extends that
4 date.

5 SEC. 13. Section 2924.10 is added to the Civil Code, to read:

6 2924.10. (a) When a borrower submits a complete first lien
7 modification application or any document in connection with a
8 first lien modification application, the mortgage servicer shall
9 provide written acknowledgment of the receipt of the
10 documentation within five business days of receipt. In its initial
11 acknowledgment of receipt of the loan modification application,
12 the mortgage servicer shall include the following information:

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

19 (2) Any deadlines, including deadlines to submit missing
20 documentation, that would affect the processing of a first lien loan
21 modification application.

22 (3) Any expiration dates for submitted documents.

23 (4) Any deficiency in the borrower's first lien loan modification
24 application.

25 (b) For purposes of this section, a borrower's first lien loan
26 modification application shall be deemed to be "complete" when
27 a borrower has supplied the mortgage servicer with all documents
28 required by the mortgage servicer within the reasonable timeframes
29 specified by the mortgage servicer.

30 (c) This section shall not apply to entities described in
31 subdivision (b) of Section 2924.18.

32 (d) This section shall apply only to mortgages or deeds of trust
33 described in Section 2924.15.

34 (e) This section shall remain in effect only until January 1,
35 2018, and as of that date is repealed, unless a later enacted statute,
36 that is enacted before January 1, 2018, deletes or extends that
37 date.

38 SEC. 14. Section 2924.11 is added to the Civil Code, to read:

39 2924.11. (a) If a foreclosure prevention alternative is approved
40 in writing prior to the recordation of a notice of default, a

1 mortgage servicer, mortgagee, trustee, beneficiary, or authorized
2 agent shall not record a notice of default under either of the
3 following circumstances:

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

7 (2) A foreclosure prevention alternative has been approved in
8 writing by all parties, including, for example, the first lien investor,
9 junior lienholder, and mortgage insurer, as applicable, and proof
10 of funds or financing has been provided to the servicer.

11 (b) If a foreclosure prevention alternative is approved in writing
12 after the recordation of a notice of default, a mortgage servicer,
13 mortgagee, trustee, beneficiary, or authorized agent shall not
14 record a notice of sale or conduct a trustee's sale under either of
15 the following circumstances:

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

19 (2) A foreclosure prevention alternative has been approved in
20 writing by all parties, including, for example, the first lien investor,
21 junior lienholder, and mortgage insurer, as applicable, and proof
22 of funds or financing has been provided to the servicer.

23 (c) When a borrower accepts an offered first lien loan
24 modification or other foreclosure prevention alternative, the
25 mortgage servicer shall provide the borrower with a copy of the
26 fully executed loan modification agreement or agreement
27 evidencing the foreclosure prevention alternative following receipt
28 of the executed copy from the borrower.

29 (d) A mortgagee, beneficiary, or authorized agent shall record
30 a rescission of a notice of default or cancel a pending trustee's
31 sale, if applicable, upon the borrower executing a permanent
32 foreclosure prevention alternative. In the case of a short sale, the
33 rescission or cancellation of the pending trustee's sale shall occur
34 when the short sale has been approved by all parties and proof of
35 funds or financing has been provided to the mortgagee, beneficiary,
36 or authorized agent.

37 (e) The mortgage servicer shall not charge any application,
38 processing, or other fee for a first lien loan modification or other
39 foreclosure prevention alternative.

1 (f) *The mortgage servicer shall not collect any late fees for*
2 *periods during which a complete first lien loan modification*
3 *application is under consideration or a denial is being appealed,*
4 *the borrower is making timely modification payments, or a*
5 *foreclosure prevention alternative is being evaluated or exercised.*

6 (g) *If a borrower has been approved in writing for a first lien*
7 *loan modification or other foreclosure prevention alternative, and*
8 *the servicing of that borrower's loan is transferred or sold to*
9 *another mortgage servicer, the subsequent mortgage servicer shall*
10 *continue to honor any previously approved first lien loan*
11 *modification or other foreclosure prevention alternative, in*
12 *accordance with the provisions of the act that added this section.*

13 (h) *This section shall apply only to mortgages or deeds of trust*
14 *described in Section 2924.15.*

15 (i) *This section shall not apply to entities described in*
16 *subdivision (b) of Section 2924.18.*

17 (j) *This section shall remain in effect only until January 1,*
18 *2018, and as of that date is repealed, unless a later enacted statute,*
19 *that is enacted before January 1, 2018, deletes or extends that*
20 *date.*

21 *SEC. 15. Section 2924.11 is added to the Civil Code, to read:*

22 *2924.11. (a) If a borrower submits a complete application for*
23 *a foreclosure prevention alternative offered by, or through, the*
24 *borrower's mortgage servicer, a mortgage servicer, trustee,*
25 *mortgagee, beneficiary, or authorized agent shall not record a*
26 *notice of sale or conduct a trustee's sale while the complete*
27 *foreclosure prevention alternative application is pending, and*
28 *until the borrower has been provided with a written determination*
29 *by the mortgage servicer regarding that borrower's eligibility for*
30 *the requested foreclosure prevention alternative.*

31 (b) *Following the denial of a first lien loan modification*
32 *application, the mortgage servicer shall send a written notice to*
33 *the borrower identifying with specificity the reasons for the denial*
34 *and shall include a statement that the borrower may obtain*
35 *additional documentation supporting the denial decision upon*
36 *written request to the mortgage servicer.*

37 (c) *If a foreclosure prevention alternative is approved in writing*
38 *prior to the recordation of a notice of default, a mortgage servicer,*
39 *mortgagee, trustee, beneficiary, or authorized agent shall not*

1 record a notice of default under either of the following
2 circumstances:

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

6 (2) A foreclosure prevention alternative has been approved in
7 writing by all parties, including, for example, the first lien investor,
8 junior lienholder, and mortgage insurer, as applicable, and proof
9 of funds or financing has been provided to the servicer.

10 (d) If a foreclosure prevention alternative is approved in writing
11 after the recordation of a notice of default, a mortgage servicer,
12 mortgagee, trustee, beneficiary, or authorized agent shall not
13 record a notice of sale or conduct a trustee's sale under either of
14 the following circumstances:

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

18 (2) A foreclosure prevention alternative has been approved in
19 writing by all parties, including, for example, the first lien investor,
20 junior lienholder, and mortgage insurer, as applicable, and proof
21 of funds or financing has been provided to the servicer.

22 (e) This section applies only to mortgages or deeds of trust as
23 described in Section 2924.15.

24 (f) For purposes of this section, an application shall be deemed
25 "complete" when a borrower has supplied the mortgage servicer
26 with all documents required by the mortgage servicer within the
27 reasonable timeframes specified by the mortgage servicer.

28 (g) This section shall become operative on January 1, 2018.

29 SEC. 16. Section 2924.12 is added to the Civil Code, to read:

30 2924.12. (a) (1) If a trustee's deed upon sale has not been
31 recorded, a borrower may bring an action for injunctive relief to
32 enjoin a material violation of Section 2923.55, 2923.6, 2923.7,
33 2924.9, 2924.10, 2924.11, or 2924.17.

34 (2) Any injunction shall remain in place and any trustee's sale
35 shall be enjoined until the court determines that the mortgage
36 servicer, mortgagee, trustee, beneficiary, or authorized agent has
37 corrected and remedied the violation or violations giving rise to
38 the action for injunctive relief. An enjoined entity may move to
39 dissolve an injunction based on a showing that the material
40 violation has been corrected and remedied.

1 (b) After a trustee's deed upon sale has been recorded, a
2 mortgage servicer, mortgagee, trustee, beneficiary, or authorized
3 agent shall be liable to a borrower for actual economic damages
4 pursuant to Section 3281, resulting from a material violation of
5 Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or
6 2924.17 by that mortgage servicer, mortgagee, trustee, beneficiary,
7 or authorized agent where the violation was not corrected and
8 remedied prior to the recordation of the trustee's deed upon sale.
9 If the court finds that the material violation was intentional or
10 reckless, or resulted from willful misconduct by a mortgage
11 servicer, mortgagee, trustee, beneficiary, or authorized agent, the
12 court may award the borrower the greater of treble actual damages
13 or statutory damages of fifty thousand dollars (\$50,000).

14 (c) A mortgage servicer, mortgagee, trustee, beneficiary, or
15 authorized agent shall not be liable for any violation that it has
16 corrected and remedied prior to the recordation of a trustee's deed
17 upon sale, or that has been corrected and remedied by third parties
18 working on its behalf prior to the recordation of a trustee's deed
19 upon sale.

20 (d) A violation of Section 2923.55, 2923.6, 2923.7, 2924.9,
21 2924.10, 2924.11, or 2924.17 by a person licensed by the
22 Department of Corporations, Department of Financial Institutions,
23 or Department of Real Estate shall be deemed to be a violation of
24 that person's licensing law.

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

28 (f) A third-party encumbrancer shall not be relieved of liability
29 resulting from violations of Section 2923.55, 2923.6, 2923.7,
30 2924.9, 2924.10, 2924.11, or 2924.17 committed by that third-party
31 encumbrancer, that occurred prior to the sale of the subject
32 property to the bona fide purchaser.

33 (g) A signatory to a consent judgment entered in the case entitled
34 *United States of America et al. v. Bank of America Corporation*
35 *et al.*, filed in the United States District Court for the District of
36 Columbia, case number 1:12-cv-00361 RMC, that is in compliance
37 with the relevant terms of the Settlement Term Sheet of that consent
38 judgment with respect to the borrower who brought an action
39 pursuant to this section while the consent judgment is in effect

1 shall have no liability for a violation of Section 2923.55, 2923.6,
2 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.

3 (h) The rights, remedies, and procedures provided by this section
4 are in addition to and independent of any other rights, remedies,
5 or procedures under any other law. Nothing in this section shall
6 be construed to alter, limit, or negate any other rights, remedies,
7 or procedures provided by law.

8 (i) A court may award a prevailing borrower reasonable
9 attorney's fees and costs in an action brought pursuant to this
10 section. A borrower shall be deemed to have prevailed for purposes
11 of this subdivision if the borrower obtained injunctive relief or
12 was awarded damages pursuant to this section.

13 (j) This section shall not apply to entities described in
14 subdivision (b) of Section 2924.18.

15 (k) This section shall remain in effect only until January 1,
16 2018, and as of that date is repealed, unless a later enacted statute,
17 that is enacted before January 1, 2018, deletes or extends that
18 date.

19 SEC. 17. Section 2924.12 is added to the Civil Code, to read:

20 2924.12. (a) (1) If a trustee's deed upon sale has not been
21 recorded, a borrower may bring an action for injunctive relief to
22 enjoin a material violation of Section 2923.5, 2923.7, 2924.11, or
23 2924.17.

24 (2) Any injunction shall remain in place and any trustee's sale
25 shall be enjoined until the court determines that the mortgage
26 servicer, mortgagee, trustee, beneficiary, or authorized agent has
27 corrected and remedied the violation or violations giving rise to
28 the action for injunctive relief. An enjoined entity may move to
29 dissolve an injunction based on a showing that the material
30 violation has been corrected and remedied.

31 (b) After a trustee's deed upon sale has been recorded, a
32 mortgage servicer, mortgagee, trustee, beneficiary, or authorized
33 agent shall be liable to a borrower for actual economic damages
34 pursuant to Section 3281, resulting from a material violation of
35 Section 2923.5, 2923.7, 2924.11, or 2924.17 by that mortgage
36 servicer, mortgagee, trustee, beneficiary, or authorized agent
37 where the violation was not corrected and remedied prior to the
38 recordation of the trustee's deed upon sale. If the court finds that
39 the material violation was intentional or reckless, or resulted from
40 willful misconduct by a mortgage servicer, mortgagee, trustee,

1 beneficiary, or authorized agent, the court may award the borrower
2 the greater of treble actual damages or statutory damages of fifty
3 thousand dollars (\$50,000).

4 (c) A mortgage servicer, mortgagee, trustee, beneficiary, or
5 authorized agent shall not be liable for any violation that it has
6 corrected and remedied prior to the recordation of the trustee's
7 deed upon sale, or that has been corrected and remedied by third
8 parties working on its behalf prior to the recordation of the
9 trustee's deed upon sale.

10 (d) A violation of Section 2923.5, 2923.7, 2924.11, or 2924.17
11 by a person licensed by the Department of Corporations,
12 Department of Financial Institutions, or Department of Real Estate
13 shall be deemed to be a violation of that person's licensing law.

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

17 (f) A third-party encumbrancer shall not be relieved of liability
18 resulting from violations of Section 2923.5, 2923.7, 2924.11, or
19 2924.17 committed by that third-party encumbrancer, that occurred
20 prior to the sale of the subject property to the bona fide purchaser.

21 (g) The rights, remedies, and procedures provided by this section
22 are in addition to and independent of any other rights, remedies,
23 or procedures under any other law. Nothing in this section shall
24 be construed to alter, limit, or negate any other rights, remedies,
25 or procedures provided by law.

26 (h) A court may award a prevailing borrower reasonable
27 attorney's fees and costs in an action brought pursuant to this
28 section. A borrower shall be deemed to have prevailed for purposes
29 of this subdivision if the borrower obtained injunctive relief or
30 was awarded damages pursuant to this section.

31 (i) This section shall become operative on January 1, 2018.

32 SEC. 18. Section 2924.15 is added to the Civil Code, to read:

33 2924.15. (a) Unless otherwise provided, paragraph (5) of
34 subdivision (a) of Section 2924, and Sections 2923.5, 2923.55,
35 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 shall apply
36 only to first lien mortgages or deeds of trust that are secured by
37 owner-occupied residential real property containing no more than
38 four dwelling units. For these purposes, "owner-occupied" means
39 that the property is the principal residence of the borrower and is

1 security for a loan made for personal, family, or household
2 purposes.

3 (b) This section shall remain in effect only until January 1,
4 2018, and as of that date is repealed, unless a later enacted statute,
5 that is enacted before January 1, 2018, deletes or extends that
6 date.

7 SEC. 19. Section 2924.15 is added to the Civil Code, to read:

8 2924.15. (a) Unless otherwise provided, Sections 2923.5,
9 2923.7, and 2924.11 shall apply only to first lien mortgages or
10 deeds of trust that are secured by owner-occupied residential real
11 property containing no more than four dwelling units. For these
12 purposes, “owner-occupied” means that the property is the
13 principal residence of the borrower and is security for a loan made
14 for personal, family, or household purposes.

15 (b) This section shall become operative on January 1, 2018.

16 SEC. 20. Section 2924.17 is added to the Civil Code, to read:

17 2924.17. (a) A declaration recorded pursuant to Section 2923.5
18 or, until January 1, 2018, pursuant to Section 2923.55, a notice
19 of default, notice of sale, assignment of a deed of trust, or
20 substitution of trustee recorded by or on behalf of a mortgage
21 servicer in connection with a foreclosure subject to the
22 requirements of Section 2924, or a declaration or affidavit filed
23 in any court relative to a foreclosure proceeding shall be accurate
24 and complete and supported by competent and reliable evidence.

25 (b) Before recording or filing any of the documents described
26 in subdivision (a), a mortgage servicer shall ensure that it has
27 reviewed competent and reliable evidence to substantiate the
28 borrower’s default and the right to foreclose, including the
29 borrower’s loan status and loan information.

30 (c) Until January 1, 2018, any mortgage servicer that engages
31 in multiple and repeated uncorrected violations of subdivision (b)
32 in recording documents or filing documents in any court relative
33 to a foreclosure proceeding shall be liable for a civil penalty of
34 up to seven thousand five hundred dollars (\$7,500) per mortgage
35 or deed of trust in an action brought by a government entity
36 identified in Section 17204 of the Business and Professions Code,
37 or in an administrative proceeding brought by the Department of
38 Corporations, the Department of Real Estate, or the Department
39 of Financial Institutions against a respective licensee, in addition

1 to any other remedies available to these entities. This subdivision
2 shall be inoperative on January 1, 2018.

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

4 2924.18. (a) (1) If a borrower submits a complete application
5 for a first lien loan modification offered by, or through, the
6 borrower's mortgage servicer, a mortgage servicer, trustee,
7 mortgagee, beneficiary, or authorized agent shall not record a
8 notice of default, notice of sale, or conduct a trustee's sale while
9 the complete first lien loan modification application is pending,
10 and until the borrower has been provided with a written
11 determination by the mortgage servicer regarding that borrower's
12 eligibility for the requested loan modification.

13 (2) If a foreclosure prevention alternative has been approved
14 in writing prior to the recordation of a notice of default, a
15 mortgage servicer, mortgagee, trustee, beneficiary, or authorized
16 agent shall not record a notice of default under either of the
17 following circumstances:

18 (A) The borrower is in compliance with the terms of a written
19 trial or permanent loan modification, forbearance, or repayment
20 plan.

21 (B) A foreclosure prevention alternative has been approved in
22 writing by all parties, including, for example, the first lien investor,
23 junior lienholder, and mortgage insurer, as applicable, and proof
24 of funds or financing has been provided to the servicer.

25 (3) If a foreclosure prevention alternative is approved in writing
26 after the recordation of a notice of default, a mortgage servicer,
27 mortgagee, trustee, beneficiary, or authorized agent shall not
28 record a notice of sale or conduct a trustee's sale under either of
29 the following circumstances:

30 (A) The borrower is in compliance with the terms of a written
31 trial or permanent loan modification, forbearance, or repayment
32 plan.

33 (B) A foreclosure prevention alternative has been approved in
34 writing by all parties, including, for example, the first lien investor,
35 junior lienholder, and mortgage insurer, as applicable, and proof
36 of funds or financing has been provided to the servicer.

37 (b) This section shall apply only to a depository institution
38 chartered under state or federal law, a person licensed pursuant
39 to Division 9 (commencing with Section 22000) or Division 20
40 (commencing with Section 50000) of the Financial Code, or a

1 *person licensed pursuant to Part 1 (commencing with Section*
2 *10000) of Division 4 of the Business and Professions Code, that,*
3 *during its immediately preceding annual reporting period, as*
4 *established with its primary regulator, foreclosed on 175 or fewer*
5 *residential real properties, containing no more than four dwelling*
6 *units, that are located in California.*

7 (c) *Within three months after the close of any calendar year or*
8 *annual reporting period as established with its primary regulator*
9 *during which an entity or person described in subdivision (b)*
10 *exceeds the threshold of 175 specified in subdivision (b), that entity*
11 *shall notify its primary regulator, in a manner acceptable to its*
12 *primary regulator, and any mortgagor or trustor who is delinquent*
13 *on a residential mortgage loan serviced by that entity of the date*
14 *on which that entity will be subject to Sections 2923.55, 2923.6,*
15 *2923.7, 2924.9, 2924.10, 2924.11, and 2924.12, which date shall*
16 *be the first day of the first month that is six months after the close*
17 *of the calendar year or annual reporting period during which that*
18 *entity exceeded the threshold.*

19 (d) *For purposes of this section, an application shall be deemed*
20 *“complete” when a borrower has supplied the mortgage servicer*
21 *with all documents required by the mortgage servicer within the*
22 *reasonable timeframes specified by the mortgage servicer.*

23 (e) *If a borrower has been approved in writing for a first lien*
24 *loan modification or other foreclosure prevention alternative, and*
25 *the servicing of the borrower’s loan is transferred or sold to*
26 *another mortgage servicer, the subsequent mortgage servicer shall*
27 *continue to honor any previously approved first lien loan*
28 *modification or other foreclosure prevention alternative, in*
29 *accordance with the provisions of the act that added this section.*

30 (f) *This section shall apply only to mortgages or deeds of trust*
31 *described in Section 2924.15.*

32 (g) *This section shall remain in effect only until January 1,*
33 *2018, and as of that date is repealed, unless a later enacted statute,*
34 *that is enacted before January 1, 2018, deletes or extends that*
35 *date.*

36 SEC. 22. *Section 2924.19 is added to the Civil Code, to read:*

37 2924.19. (a) (1) *If a trustee’s deed upon sale has not been*
38 *recorded, a borrower may bring an action for injunctive relief to*
39 *enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.*

1 (2) Any injunction shall remain in place and any trustee's sale
2 shall be enjoined until the court determines that the mortgage
3 servicer, mortgagee, beneficiary, or authorized agent has corrected
4 and remedied the violation or violations giving rise to the action
5 for injunctive relief. An enjoined entity may move to dissolve an
6 injunction based on a showing that the material violation has been
7 corrected and remedied.

8 (b) After a trustee's deed upon sale has been recorded, a
9 mortgage servicer, mortgagee, beneficiary, or authorized agent
10 shall be liable to a borrower for actual economic damages
11 pursuant to Section 3281, resulting from a material violation of
12 Section 2923.5, 2924.17, or 2924.18 by that mortgage servicer,
13 mortgagee, beneficiary, or authorized agent where the violation
14 was not corrected and remedied prior to the recordation of the
15 trustee's deed upon sale. If the court finds that the material
16 violation was intentional or reckless, or resulted from willful
17 misconduct by a mortgage servicer, mortgagee, beneficiary, or
18 authorized agent, the court may award the borrower the greater
19 of treble actual damages or statutory damages of fifty thousand
20 dollars (\$50,000).

21 (c) A mortgage servicer, mortgagee, beneficiary, or authorized
22 agent shall not be liable for any violation that it has corrected and
23 remedied prior to the recordation of the trustee's deed upon sale,
24 or that has been corrected and remedied by third parties working
25 on its behalf prior to the recordation of the trustee's deed upon
26 sale.

27 (d) A violation of Section 2923.5, 2924.17, or 2917.18 by a
28 person licensed by the Department of Corporations, the
29 Department of Financial Institutions, or the Department of Real
30 Estate shall be deemed to be a violation of that person's licensing
31 law.

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

35 (f) A third-party encumbrancer shall not be relieved of liability
36 resulting from violations of Section 2923.5, 2924.17 or 2924.18,
37 committed by that third-party encumbrancer, that occurred prior
38 to the sale of the subject property to the bona fide purchaser.

39 (g) The rights, remedies, and procedures provided by this section
40 are in addition to and independent of any other rights, remedies,

1 *or procedures under any other law. Nothing in this section shall*
2 *be construed to alter, limit, or negate any other rights, remedies,*
3 *or procedures provided by law.*

4 *(h) A court may award a prevailing borrower reasonable*
5 *attorney's fees and costs in an action brought pursuant to this*
6 *section. A borrower shall be deemed to have prevailed for purposes*
7 *of this subdivision if the borrower obtained injunctive relief or*
8 *damages pursuant to this section.*

9 *(i) This section shall apply only to entities described in*
10 *subdivision (b) of Section 2924.18.*

11 *(j) This section shall remain in effect only until January 1,*
12 *2018, and as of that date is repealed, unless a later enacted statute,*
13 *that is enacted before January 1, 2018, deletes or extends that*
14 *date.*

15 *SEC. 23. Section 2924.20 is added to the Civil Code, to read:*

16 *2924.20. Consistent with their general regulatory authority,*
17 *and notwithstanding subdivisions (b) and (c) of Section 2924.18,*
18 *the Department of Corporations, the Department of Financial*
19 *Institutions, and the Department of Real Estate may adopt*
20 *regulations applicable to any entity or person under their*
21 *respective jurisdictions that are necessary to carry out the purposes*
22 *of the act that added this section. A violation of the regulations*
23 *adopted pursuant to this section shall only be enforceable by the*
24 *regulatory agency.*

25 *SEC. 24. The provisions of this act are severable. If any*
26 *provision of this act or its application is held invalid, that invalidity*
27 *shall not affect other provisions or applications that can be given*
28 *effect without the invalid provision or application.*

29 *SEC. 25. No reimbursement is required by this act pursuant*
30 *to Section 6 of Article XIII B of the California Constitution because*
31 *the only costs that may be incurred by a local agency or school*
32 *district will be incurred because this act creates a new crime or*
33 *infraction, eliminates a crime or infraction, or changes the penalty*
34 *for a crime or infraction, within the meaning of Section 17556 of*
35 *the Government Code, or changes the definition of a crime within*
36 *the meaning of Section 6 of Article XIII B of the California*
37 *Constitution.*

38 ~~SECTION 1. It is the intent of the Legislature to enact~~
39 ~~legislation to amend the state's foreclosure laws to implement and~~

1 ~~make permanent the servicing standards and other provisions of~~
2 ~~the National Mortgage Settlement.~~

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5 **CORRECTIONS:**

6 **Digest—Page 4.**

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