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)

February 19, 2010

An act to amend Section 2923.5 of, and to add and repeal Sections 2923.4, 2923.7, 2923.73, ~~and~~ 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 borrower to bring an action, within one year of the trustee sale, to void the foreclosure, request an injunction, or to recover specified damages from the mortgagee, trustee, beneficiary, or authorized agent, 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:

SECTION 1. Section 2923.4 is added to the Civil Code, to read:

2923.4. (a) A state government entity shall create the following notice in at least 12-point type and make it available in English and the languages set forth in subdivision (b) of Section 1632:

"Important Notice Regarding Your Rights and Foreclosure Avoidance Options: California law requires that you receive this notice of your legal rights before the foreclosure process begins.

ARE YOU HAVING TROUBLE PAYING YOUR MORTGAGE?

If you are having trouble paying your mortgage, you should contact your loan servicer as soon as possible to discuss options for avoiding foreclosure. Your loan servicer is the company listed on your mortgage bills that collects your mortgage payments.

You may also call 1-800-569-4287 to find a housing counseling agency certified by the United States Department of Housing and Urban Development (HUD) that offers free services in your area.

POTENTIAL FORECLOSURE AVOIDANCE OPTIONS

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

Your loan servicer may, but is not required to, offer other types of loan modifications instead of or in addition to HAMP. However, not all loan servicers offer loan modifications, and not all borrowers are eligible to apply for a loan modification. You may also qualify for other options for avoiding foreclosure, such as loan refinancing, a temporary forbearance, a repayment plan, short sale, or a deed in lieu of foreclosure.

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

If the letter from your loan servicer indicates that you may be eligible to apply for a loan modification and you are interested in applying, you must submit the required documentation to your loan servicer as soon as possible. Your loan servicer must give you at least 45 days from the date you received this notice to submit the required documentation. Be sure to read and carefully review any communication from your loan servicer, and submit all of the documentation and information required by the deadlines indicated in the loan servicer's communications. If you submit all of the required documentation and information by the specified deadlines, your loan servicer must review your application and inform you of its decision before initiating the foreclosure process.

If your loan servicer denies your request for a loan modification, it must send you a detailed letter that explains the reason for the denial and provides you with contact information for the loan servicer if you need more information or want to dispute the denial.

THE FORECLOSURE PROCESS

If your loan servicer complies with the contact and notice requirements described in Sections 2923.5 and 2923.73 of the Civil Code, including sending you a denial explanation letter if you are eligible to apply for a loan modification and submit a timely loan modification application, it may proceed with the foreclosure process. Your loan servicer may not foreclose on your home without filing official documents with the county recorder. You are entitled to receive copies of those documents.

Notice of Default:

The first step in the foreclosure process is the filing of a notice of default. If your loan servicer records a notice of default on your loan, it must mail you a copy of that notice by certified mail and must wait at least three months before taking further steps to sell your home.

Notice of Sale:

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

Please seek legal help if you believe that you have been denied your legal foreclosure rights. Keep in mind, though, that it is illegal for any person, including a lawyer, to charge you for helping you with a loan modification or other effort to avoid foreclosure before providing the services promised."

(b) The English and translated forms of this notice shall be made available on or before January 31, 2011.

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

SEC. 2. Section 2923.5 of the Civil Code is amended to read:

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

(b) For all mortgage loans, a notice of default may not be filed until a borrower either applies for a loan modification and has been evaluated and denied for a loan modification based on the requirements and guidelines used by the mortgagee, beneficiary, or authorized agent, or reasonable borrower solicitation efforts have been completed and the borrower's deadline for submitting a loan modification application has passed without the borrower applying for a loan modification. If a mortgagee, beneficiary, or authorized agent has no loan modification option available to a given borrower, a notice of default may be filed 30 days after reasonable borrower solicitation efforts regarding any other foreclosure avoidance options available to that borrower have been completed.

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

(1) After a loan becomes 16 days delinquent, but not later than 10 days after the loan becomes 60 days delinquent, a mortgagee, beneficiary, or authorized agent shall send the borrower a written communication, by certified mail with return receipt requested, containing both of the following:

(A) A copy of the informational notice described in Section 2923.4. A mortgagee, beneficiary, or authorized agent shall be subject to the requirements of this subparagraph 30 days following the availability of the English and translated forms of the notice, but in no event earlier than January 1, 2011.

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

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

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

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

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

(2) (A) A mortgagee, beneficiary, or authorized agent shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. The mortgagee, beneficiary, or authorized agent shall attempt to make this contact, at a minimum, by calling the borrower by telephone at the last known telephone number of record at least three times at different hours and on different days. These efforts shall be completed no later than 15 calendar days after the date that the informational notice and letter required by paragraph (1) are sent. This in-person or telephone communication shall be clearly identified as an attempt to initiate discussion with the borrower about foreclosure avoidance options,

and may not include a demand for immediate payment of any past due amounts owed by the borrower. During the initial contact, the mortgagee, beneficiary, or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

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

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

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

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

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

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

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

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

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

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

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

(1) The mortgagee, beneficiary, or authorized agent has an existing loan modification program or a borrower is otherwise eligible to be considered for a loan modification by the mortgagee, beneficiary, or authorized agent.

(2) The borrower applied for a loan modification no later than 30 calendar days after receiving the notice of default.

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

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

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

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

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

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

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

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

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

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

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

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

~~(k)~~

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

SEC. 3. Section 2923.7 is added to the Civil Code, to read:

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

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

(B) Transmit to the foreclosure trustee or authorized agent a declaration of compliance that is signed on behalf of the mortgage servicer. The declaration shall be signed either by an individual having personal knowledge of the facts stated within, or by an individual with authority to bind the mortgage servicer, who certifies that the declaration is based upon records that were made in the regular course of the servicer's business at or near the time of the events recorded. The declaration of compliance shall be included as part of, or attached to, every notice of default filed pursuant to Section 2924. A notice of default that does not include a declaration of compliance shall not be recorded.

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

DECLARATION OF COMPLIANCE

I. BORROWER CONTACT SOLICITATION EFFORTS

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

□ Cal. Civil Code Sec. 2923.5(i).
□ Cal. Civil Code Sec. 2923.5(j).

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

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

~~II. FORECLOSURE AVOIDANCE REVIEW~~

II. FORECLOSURE AVOIDANCE REVIEW

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

□ Cal. Civil Code Sec. 2923.73(e).
□ Cal. Civil Code Sec. 2923.73(f).
□ Cal. Civil Code Sec. 2923.73(g).

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

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

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

□ The borrower initiated an application for a loan modification either verbally or in writing but did not submit all required written application materials by the applicable deadline, and the mortgagee, beneficiary, or authorized agent sent the borrower a denial explanation letter in compliance with the requirements of Cal. Civil Code Sec. 2923.73(a)(1).
□ The borrower did not initiate an application for a loan modification either verbally or in writing by the applicable deadline.
□ The borrower was offered a HAMP trial period plan, but the borrower did not accept the trial period plan or failed to comply with the terms of the plan.
□ The borrower was offered a permanent loan modification, but the borrower did not accept the modification offered.
□ The borrower was offered and accepted a permanent loan modification, but the borrower failed to comply with the terms of the modification.
□ The borrower communicated to the mortgagee, beneficiary, or authorized agent that he or she is not interested in pursuing a loan modification.

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

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

~~(c)~~

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

SEC. 4. Section 2923.73 is added to the Civil Code, to read:

2923.73. (a) If a borrower initiates an application for a loan modification either verbally or in writing, and the mortgagee, beneficiary, or authorized agent denies either a permanent loan modification or a federal Home Affordable Modification Program (HAMP) trial period plan, the mortgagee, beneficiary, or authorized agent shall send the borrower by certified mail no later than 10 business days following the denial decision a denial explanation letter that clearly explains the reason or reasons for the denial.

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

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

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

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

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

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

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

(i) If applicable, an explanation of any investor guidelines or restrictions on loan modifications that resulted in the denial decision.

(ii) If the denial decision is based on the borrower's income or expenses, or on a debt-to-income ratio or net present value calculation, any borrower income or expense figures, including, but not limited to, property taxes and hazard insurance premiums, used in determining the borrower's qualification for a loan modification.

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

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

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

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

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

(2) If a borrower submits an initial application, but does not include all the documentation or information the mortgagee, beneficiary, or authorized agent needs in order to consider the borrower for a loan modification, the mortgagee, beneficiary, or authorized agent must provide the borrower with a written notice that clearly describes any supplemental documentation or information needed in order to consider the borrower for a loan modification, and the deadline for providing that documentation or information, which shall not be less than 25 calendar days from the date the borrower receives the notice.

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

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

(d) This section shall not require a mortgagee, beneficiary, or authorized agent to apply any standards in determining a borrower's eligibility or qualification for a loan modification separate from the standards and requirements of the loan modification program or programs utilized by the mortgagee, beneficiary, or authorized agent, and shall not require a mortgagee, beneficiary, or authorized agent to offer or provide a borrower with a loan modification if that borrower does not qualify for a modification under any applicable loan modification program.

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

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

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

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

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

(2) Nothing in this subdivision shall be construed to diminish in any way the obligations of a mortgagee, trustee, beneficiary, or

authorized agent that is participating in the HAMP or is otherwise required to review a loan under HAMP guidelines.

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

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

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

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

~~(h)~~

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

SEC. 5. Section 2923.75 is added to the Civil Code, to read:

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

(b) If the mortgagee, trustee, beneficiary, or authorized agent records a notice of default in material violation of subdivision (b) of Section 2923.5, denies a loan modification application for failure to provide required verification documents or information after it fails to materially comply with subdivision (b) of Section 2923.73, or fails to send a denial explanation letter that materially complies with the requirements of subdivision (a) of Section 2923.73, a borrower may pursue any one of the following options, as applicable, against the mortgagee, trustee, beneficiary, or authorized agent:

(1) If the property at issue is sold to a bona fide purchaser at a trustee sale conducted in accordance with Section 2924f, the

borrower may recover the greater of treble actual damages or statutory damages in the amount of ten thousand dollars ($10,000).

(2) If, prior to the initiation of an action under this section, the property at issue is sold to a bona fide purchaser by the foreclosing party subsequent to a trustee sale conducted in accordance with Section 2924f in which title was transferred to the foreclosing party, the borrower may recover the greater of treble actual damages or statutory damages in the amount of ten thousand dollars ($10,000). If the borrower establishes that the mortgagee, trustee, beneficiary, or authorized agent had actual notice of the borrower's claim under this section prior to selling the property to a bona fide purchaser, the borrower shall be entitled to recover statutory damages in the amount of fifteen thousand dollars ($15,000), in addition to other damages recoverable under this subparagraph.

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

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

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

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

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

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

(C) Materially comply with all the requirements of subdivision (b) of Section 2923.5 or subdivision (a) or (b) of Section 2923.73 that were not previously satisfied, and either offer the borrower a loan modification if the borrower qualifies for one, or send the borrower a written communication informing the borrower of the steps that were taken and the outcome, including any reason for the denial of a loan modification, if applicable, at least 30 days before recording a notice of sale.

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

(A) Prior to taking any steps under subparagraph (B) of this paragraph, the mortgagee, trustee, beneficiary, or authorized agent shall send the borrower a written communication informing the borrower that it is not proceeding with an eviction, and clearly explain the steps the mortgagee, trustee, beneficiary, or authorized agent will take prior to commencing the eviction process.

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

(d) (1) If the mortgagee, trustee, beneficiary, or authorized agent fails to send the written communication required by paragraph (1) of subdivision (c) of Section 2923.5, fails to record a completed declaration of compliance pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 2923.7, or submits a materially false declaration of compliance, a borrower may recover statutory damages of up to ten thousand dollars

($10,000), but not less than one thousand five hundred dollars ($1,500), from the mortgagee, trustee, beneficiary, or authorized agent.

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

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

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

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

SEC. 6. Section 2923.77 is added to the Civil Code, to read:

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

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

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

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

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

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

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

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

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

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

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

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

(B) A grandfathered party may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the

telephone call is answered, the call is connected to a live representative of the grandfathered party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 6.~~

SEC. 7. Nothing in this act shall affect any cause of action or claim that is pending as of the effective date of this act.

~~SEC. 7.~~

SEC. 8. The requirements of Sections 2923.4, 2923.7, and 2923.73, the amendments to Section 2923.5 made at the 2009–10 Regular Session of the Legislature, and the remedies set forth in Section 2923.75, shall not be construed to be retroactive.

~~SEC. 8.~~

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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