AMENDED IN SENATE MARCH 29, 2012

SENATE BILL No. 1470

Introduced by Senators Leno, Pavley, and Steinberg
(Coauthors: Senators DeSaulnier and Hancock)

February 24, 2012

An act *to amend Sections 2923.5 and 2924g of, to amend and repeal Section 2924 of, and to add Sections 2923.6, 2924.9, 2924.10, 2924.11, 2924.12, and 2924.13 to, the Civil Code,* relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1470, 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 to include a declaration stating that the trustee, beneficiary, or authorized agent has contacted the borrower, or has tried with due diligence to contact the borrower, or that no contact was required for a specified reason.

This bill would additionally require the borrower to be provided, if applicable, with a deadline for the borrower to submit an initial application for a loan modification. The bill would require the declaration to also state that the borrower was not a servicemember or dependent of a servicemember entitled to benefits under the federal Servicemembers Civil Relief Act, that the mortgagee, trustee, beneficiary, or authorized agent has possession of the note and mortgage, or deed of trust, and other specified documents that evidence the right to foreclose, and has attached copies thereof to the declaration, *as specified, or a separate declaration containing specified information, if the above described documents cannot be located. The bill would prescribe procedures and notices that must be sent by the mortgagee, trustee, beneficiary, or authorized agent if the notice of default was filed prior to January 1, 2013, and a notice of rescission was not subsequently recorded. The bill would prohibit recording a notice of default unless a specified written notice has been sent at least 14 days before a notice of default is recorded.*

The bill would prohibit a notice of default from being recorded while a loan modification application is pending, under specified conditions, and would establish additional procedures to be followed regarding the loan modification application before a notice of default could be recorded.

(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 sale.

This bill would impose additional requirements pertaining to applications for loan modifications that must be satisfied prior to recording a notice of sale in order to exercise a power of sale. The bill would 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, time, and location when the new sale date is at least 10 calendar days after the date of postponement, as specified.

The bill would establish procedures for a loan modification application process to be used after a notice of sale has been recorded. The bill would prohibit a notice of sale from being recorded under certain conditions, including, among others, if the borrower is in compliance with a loan modification plan, forbearance, or loan repayment plan, as specified, or if a short sale or deed-in-lieu of foreclosure has been approved, as specified. The bill would require mortgagees, trustees, beneficiaries, or authorized agents to track and record specified data pertaining to loan modification agreements. The bill would prohibit the collection of late fees while a loan modification or short sale is being considered, if certain criteria are met.

(3) The bill would repeal duplicate provisions of law.

(4) The bill would make a specified statement of legislative intent regarding appropriate remedies under the bill for violations of the bill's provisions.

~~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.

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

SECTION 1. Section 2923.5 of the Civil Code is amended to read:

2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized agent may not ~~file~~ *record* a notice of default pursuant to Section 2924 until 30 days after initial contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (g).

(2) A mortgagee, *trustee,* 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. 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.~~ *agency, and, if applicable, a deadline for the borrower to submit an initial application for a loan modification.* Any meeting may occur telephonically.

(b) Nothing in this subdivision shall be construed in derogation of the parties' rights established under Section 3309 of the Commercial Code. A notice of default recorded pursuant to Section 2924 shall include a declaration of the following:

~~(b) A notice of default filed pursuant to Section 2924 shall include a declaration that the~~

(1) The mortgagee, *trustee,* beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required pursuant to subdivision (h).

(2) The borrower is not a servicemember or the dependent of a servicemember who is entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 501 et seq.).

(3) The mortgagee, trustee, beneficiary, or authorized agent has possession of the note and mortgage or deed of trust as well as all the assignments and endorsements that evidence its right to foreclose, and has attached copies of evidence of all assignments and endorsements of the mortgage or deed of trust to the declaration. If this proof cannot be located, the mortgagee, trustee, beneficiary, or authorized agent shall include a separate declaration signed either by an individual having personal knowledge of the facts stated within, or by an individual with authority to bind the mortgagee, trustee, beneficiary, or authorized agent, who certifies that the declaration is based upon records that were made in the regular course of business at or near the time of the events recorded, stating the following:

(A) Facts sufficient to show that the mortgagee, trustee, beneficiary, or authorized agent has the right to enforce the note.

(B) A statement that the person cannot reasonably obtain possession of the note, and a description of the reasonable efforts made to obtain the note.

(C) A description of the terms of the note and any riders attached thereto, including, at a minimum the following:

(i) The date of execution.

(ii) The parties.

(iii) The principal amount of the loan.

(iv) The amortization period of the loan.

(v) The initial interest rate and, if applicable, the initial date and the frequency of any adjustments to the interest rate, and the index and margin used to calculate the interest rate at the time of any scheduled adjustment.

(vi) The expiration date of any interest-only period, if applicable.

(c) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice of default prior to ~~the enactment of this section~~ *January 1, 2013,* and did not subsequently file a notice of rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the notice of sale ~~filed~~ *recorded* pursuant to Section 2924f, include a declaration that ~~either:~~ *states the following:*

(1) ~~States that~~ *That at least 60 days prior to* the ~~borrower was contacted to assess~~ *recording of* the ~~borrower's financial situation and to explore options for~~ *notice of sale or as soon thereafter as possible, a written communication was sent to* the borrower ~~to avoid foreclosure.~~ *that included all of the following information:*

(A) The borrower can still be evaluated for alternatives to foreclosure.

(B) Whether an application must be submitted by the borrower in order to be considered for a foreclosure prevention alternative.

(C) The means and process by which a borrower may obtain an application for a loan modification or any foreclosure prevention alternative and the deadlines for any submission to be timely processed.

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

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

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

(f) 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 paragraph (2) of subdivision (a). Any loan modification or workout plan offered at the meeting by the mortgagee, beneficiary, or authorized agent is subject to approval by the borrower.

(g) No notice of default may be recorded unless the mortgagee, trustee, beneficiary, or authorized agent has also sent a separate written notice that includes all of the following at least 14 days before any notice of default is recorded:

~~(g)~~

(1) A statement setting forth facts supporting the right of the mortgagee, trustee, beneficiary, or authorized agent to foreclose on the borrower's loan note.

(2) Notification that the borrower may receive, upon written request, a copy of the borrower's payment history since the borrower was last less than 60 days past due, a copy of the borrower's loan note, copies of any assignments of the note and of the mortgage or deed of trust that would evidence a right to foreclose on the borrower's property, and, if applicable, the name of the investor that holds the borrower's loan note.

(3) An itemized plain language account summary setting forth each of the following items:

(A) The total amount needed to reinstate or bring the account current, and the amount of the principal obligation under the mortgage.

(B) The date through which the borrower's obligation is paid.

(C) The date of the last full payment.

(D) The current interest rate in effect for the loan, if the rate is effective for at least 30 days.

(E) The date on which the interest rate may next reset or adjust, unless the rate changes more frequently than once every 30 days.

(F) The amount of any prepayment fee to be charged, if any.

(G) A description of any late payment fees.

(H) A telephone number or electronic mail address that may be used by the borrower to obtain information regarding the mortgage.

(4) A statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 501 et seq.) regarding the servicemember's interest rate and the risk of foreclosure, and counseling for covered servicemembers that is available at agencies such as Military OneSource and Armed Forces Legal Assistance.

(5) A statement to the borrower outlining the loss mitigation efforts that had already been undertaken with respect to the borrower, and, if no loss mitigation efforts were offered or undertaken, a statement, if applicable, giving the reason why the borrower is ineligible for a loan modification or other loss mitigation options.

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

(1) A mortgagee, *trustee,* beneficiary, or authorized agent 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.~~ *agency, and, if applicable, a deadline for the borrower to submit an initial application for a loan modification.*

(2) (A) After the letter has been sent, the mortgagee, *trustee,* beneficiary, or authorized agent 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 mortgagee, *trustee,* 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, beneficiary, or authorized agent.

(C) A mortgagee, *trustee,* 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 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 mortgagee, *trustee*, beneficiary, or authorized agent shall then send a certified letter, with return receipt ~~requested.~~ *requested that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency, and if applicable, a deadline for the borrower to submit an initial application for a loan modification.*

(4) The mortgagee, *trustee*, 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, *trustee,* beneficiary, or authorized agent 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 mortgagee, *trustee,* beneficiary, or authorized agent when discussing options for avoiding foreclosure.

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

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

~~(h)~~

(i) Subdivisions (a), (c), *(g),* and ~~(g)~~ *(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 mortgagee, trustee, beneficiary, or authorized agent.

(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) 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.~~

~~(i)~~

(j) This section shall apply only to mortgages or deeds of trust ~~recorded from January 1, 2003, to December 31, 2007, inclusive,~~ 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.

~~(j) 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 2923.6 is added to the Civil Code, to read:

2923.6. (a) If a borrower submits an application for a loan modification within 120 days after delinquency and a notice of default has not yet been recorded, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default while the loan modification application is pending. A mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default until either:

(1) The mortgagee, trustee, beneficiary, or authorized agent makes a determination that the borrower is not eligible for a loan modification.

(2) If the borrower does not accept an offered trial or permanent loan modification or other foreclosure prevention alternative, the earlier of the date of the borrower's decline of the stated offer or the borrower's deadline for accepting the offer, which may not be less than 14 days from the date the borrower was notified of the offer.

(b) If a borrower accepts an offered trial or permanent loan modification under this section, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default until the borrower fails to timely submit the first payment or until the borrower otherwise breaches the terms of the offer, whichever event occurs first.

(c) If the loan modification requested by a borrower under this section is denied, the mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default until the later of:

(1) Thirty days after the borrower is notified in writing of the denial.

(2) If the borrower appeals the denial, until the later of 15 days after the denial of the appeal or 14 days after the loan modification or other foreclosure prevention alternative is offered after appeal but declined by the borrower, or, if a trial or permanent loan modification is offered after appeal, until the borrower fails to timely submit the first payment or until the borrower otherwise breaches the terms of the offer, whichever event occurs first.

SEC. 3. Section 2924 of the Civil Code, as amended by Section 1 of Chapter 180 of the Statutes of 2010, is amended to read:

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

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

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

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

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

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

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

(3) Except as provided in paragraph (4), after the lapse of the three months described in paragraph (2), *and* the *requirements of Sections 2924.9, 2924.10, 2924.11 have been met, the* mortgagee, trustee, or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.

(4) Notwithstanding paragraph (3), the mortgagee, trustee, or other person authorized to take sale may ~~file~~ *record* a notice of sale pursuant to Section 2924f up to five days before the lapse of the three-month period described in paragraph (2), provided that the date of sale is no earlier than three months and 20 days after the ~~filing~~ *recording* of the notice of ~~default.~~ *default, and the requirements of Sections 2924.9, 2924.10, 2924.11 have been met.*

(5) Except as provided in subdivisions (c) and (d) of Section 2924g, the trustee, mortgagee, or beneficiary, or any of their authorized agents shall provide written notice to the borrower within five calendar days after the postponement of a foreclosure sale, setting forth the new sale date and time, if any, and, if applicable, any new location, whenever the new sale date is at least 10 calendar days after the date of postponement.

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

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

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

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

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

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

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

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

SEC. 4. Section 2924 of the Civil Code, as amended by Section 2 of Chapter 180 of the Statutes of 2010, is repealed.

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

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

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

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

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

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

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

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

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

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

~~(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of~~

~~a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.~~

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

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

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

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

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

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

SEC. 5. Section 2924.9 is added to the Civil Code, to read:

2924.9. Within five calendar days after recording a notice of default pursuant to Section 2924, a trustee, mortgagee, beneficiary, or authorized agent shall send a written communication to the borrower that includes all of the following information:

(a) That the borrower can still be evaluated for alternatives to foreclosure.

(b) Whether an application is required to be submitted by the borrower in order to be considered for a foreclosure prevention alternative.

(c) The means and process by which a borrower may obtain an application for a loan modification or any foreclosure prevention alternative and the deadlines for any submission to be timely processed. Any statement of applicable deadlines shall include information relating to the requirements and procedures set forth in Sections 2924.10 and 2924.11.

SEC. 6. Section 2924.10 is added to the Civil Code, to read:

2924.10. (a) When a borrower submits an application for a loan modification within 60 days after the recording of a notice *of default, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale while the loan modification application is pending. Notwithstanding paragraphs (3) and (4) of subdivision (a) of Section 2924, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale under this section until either of the following:*

(1) The mortgagee, trustee, beneficiary, or authorized agent makes a determination that the borrower is not eligible for a loan modification.

(2) If the borrower does not accept an offered loan modification or other foreclosure prevention alternative, the earlier of the date of the borrower's decline of the stated offer or the borrower's deadline for accepting the offer, which may not be less than 14 days from the date the borrower was notified of the offer.

(b) If a borrower accepts an offered trial or permanent loan modification, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale until the borrower fails to timely submit the first payment or until the borrower otherwise breaches the terms of the offer, whichever occurs first.

(c) If the loan modification requested by a borrower under this section is denied, the mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale until the later of either of the following:

(1) Thirty days after the borrower is notified in writing of the denial.

(2) If the borrower appeals the denial, until the later of 15 days after the denial of the appeal or 14 days after the loan modification or other foreclosure prevention alternative is offered after appeal but declined by the borrower, or, if a loan modification is offered after appeal, until the borrower fails to timely submit the first trial period payment or until the borrower breaches the trial plan, whichever event occurs first.

SEC. 7. Section 2924.11 is added to the Civil Code, to read:

2924.11. (a) When a borrower submits an application for a loan modification less than 15 days before a notice of sale may be recorded pursuant to Sections 2924 and 2924f, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale while the loan modification application is pending. Notwithstanding paragraphs (3) and (4) of subdivision (a) of Section 2924, a mortgagee, trustee, beneficiary, or authorized *agent shall not record a notice of sale under this section until either of the following:*

(1) The mortgagee, trustee, beneficiary, or authorized agent makes a determination that the borrower is not eligible for a loan modification.

(2) The mortgagee, trustee, beneficiary, or authorized agent notifies the borrower whether it can conduct an expedited review of the loan modification application or, if not, the reasons it cannot complete the review of the loan modification application.

(b) If a borrower accepts an offered trial or permanent loan modification, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale until the borrower fails to timely submit the first payment or until the borrower otherwise breaches the terms of the offer, whichever occurs first.

SEC. 8. Section 2924.12 is added to the Civil Code, to read:

2924.12. (a) When a borrower submits a loan modification application or any document in connection with a loan modification application pursuant to Section 2923.6 or 2924.10, the mortgagee, trustee, beneficiary, or authorized agent shall do the following:

(1) Provide written acknowledgment of the receipt of the documentation within three business days of receipt. In its acknowledgment of receipt of the loan modification application, the mortgagee, trustee, beneficiary, or authorized agent shall include the following information:

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

(B) Identification of any deadlines, including deadlines to submit missing documentation, that would affect the processing of a loan modification application.

(C) Identification of any expiration dates for submitted documents.

(2) Notify the borrower of any deficiency in the borrower's loan modification application no later than five business days after receipt of the submission of documentation.

(b) If a borrower's application for a loan modification is denied, the borrower shall have 30 days from the date written denial of the application is sent to the borrower to appeal the denial.

(c) Following the denial of a loan modification application submitted pursuant to Section 2923.6 or 2924.10, the mortgagee, trustee, beneficiary, or authorized agent shall send a written nonapproval notice to the borrower identifying the reasons for denial and the factual information considered, including the following information:

(1) The notice shall inform the borrower of the amount of time from the date of the denial letter he or she has to request an appeal of the denial of a loan modification, unless the reason stated for the denial is an ineligible mortgage, an ineligible property, or if the loan modification offer was not accepted by the borrower or the request was withdrawn.

(2) If the denial was based on investor disallowance, the mortgagee, trustee, beneficiary, or authorized agent shall disclose in the written notice the name of the investor or investment trust, if applicable, and state the specific reasons for the investor denial.

(3) If the denial is the result of a net present value calculation, the mortgagee, trustee, beneficiary, or authorized agent shall provide in the written notice the monthly gross income and property value used in the calculation and inform the borrower of his or her right to request a full appraisal to be conducted of the property by an independent licensed appraiser, at borrower expense if the borrower chooses to appeal the denial.

(d) If the mortgagee, trustee, beneficiary, or authorized agent denies a borrower's appeal, the denial letter shall include a description of other available loss mitigation, including short sales and deeds in lieu of foreclosure.

SEC. 9. Section 2924.13 is added to the Civil Code, to read:

2924.13. (a) A mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale under any of the following circumstances:

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

(2) A short sale or deed-in-lieu of foreclosure has been approved by all parties, including the first lien investor, the junior lienholder, and the mortgage insurer, as applicable, and proof of funds or

financing has been provided to the mortgagee, trustee, beneficiary, or authorized agent.

(b) When a borrower accepts an offered loan modification, the mortgagee, trustee, beneficiary, or authorized agent shall provide the borrower with a copy of the fully executed loan modification agreement following receipt of the executed copy from the borrower. If the modification was not made in writing, the mortgagee, trustee, beneficiary, or authorized agent shall provide the borrower with a written summary of its terms as soon as possible following the approval of the modification.

(c) A mortgagee, trustee, beneficiary, or authorized agent shall record a recision of a notice of default upon the borrower executing a permanent loan modification.

(d) The mortgagee, trustee, beneficiary, or authorized agent shall make publicly available information on its qualification processes, all required documentation and information necessary for a complete loan modification application, and key eligibility factors for all propriety loan modifications.

(e) The mortgagee, trustee, beneficiary, or authorized agent shall not charge any application, processing, or other fee for a proprietary loan modification.

(f) The mortgagee, trustee, beneficiary, or authorized agent shall track outcomes and maintain records regarding characteristics, including, but not limited to, debt-to-income ratios of modified payments and the percentage change in monthly payment amounts, and performance of proprietary loan modifications. A mortgagee, trustee, beneficiary, or authorized agent shall provide a description of eligibility criteria, and modification terms on a publicly available Internet Web site.

(g) The mortgagee, trustee, beneficiary, or authorized agent shall not collect any late fees for periods during which a complete loan modification is under consideration, the borrower is making timely trial or permanent modification payments, or a short sale offer is being evaluated.

(h) Nothing in this article obviates or supersedes the obligations of the signatories to the National Mortgage Settlement.

SEC. 10. Section 2924g of the Civil Code is amended to read:

2924g. (a) All sales of property under the power of sale contained in any deed of trust or mortgage shall be held in the county where the property or some part thereof is situated, and shall be made at auction, to the highest bidder, between the hours of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

The sale shall commence at the time and location specified in the notice of sale. Any postponement shall be announced at the time and location specified in the notice of sale for commencement of the sale or pursuant to paragraph (1) of subdivision (c).

If the sale of more than one parcel of real property has been scheduled for the same time and location by the same trustee, (1) any postponement of any of the sales shall be announced at the time published in the notice of sale, (2) the first sale shall commence at the time published in the notice of sale or immediately after the announcement of any postponement, and (3) each subsequent sale shall take place as soon as possible after the preceding sale has been completed.

(b) When the property consists of several known lots or parcels, they shall be sold separately unless the deed of trust or mortgage provides otherwise. When a portion of the property is claimed by a third person, who requires it to be sold separately, the portion subject to the claim may be thus sold. The trustor, if present at the sale, may also, unless the deed of trust or mortgage otherwise provides, direct the order in which property shall be sold, when the property consists of several known lots or parcels which may be sold to advantage separately, and the trustee shall follow that direction. After sufficient property has been sold to satisfy the indebtedness, no more can be sold.

If the property under power of sale is in two or more counties, the public auction sale of all of the property under the power of sale may take place in any one of the counties where the property or a portion thereof is located.

(c) (1) There may be a postponement or postponements of the sale proceedings, including a postponement upon instruction by the beneficiary to the trustee that the sale proceedings be postponed, at any time prior to the completion of the sale for any period of time not to exceed a total of 365 days from the date set forth in the notice of sale. The trustee shall postpone the sale in accordance with any of the following:

(A) Upon the order of any court of competent jurisdiction.

(B) If stayed by operation of law.

(C) By mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee.

(D) At the discretion of the trustee.

(2) In the event that the sale proceedings are postponed for a period or periods totaling more than 365 days, the scheduling of any further sale proceedings shall be preceded by giving a new notice of sale in the manner prescribed in Section 2924f. New fees incurred for the new notice of sale shall not exceed the amounts specified in Sections 2924c and 2924d, and shall not exceed reasonable costs that are necessary to comply with this paragraph.

(d) The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for ~~sale.~~ *sale for any postponement that does not exceed nine days, otherwise, notice shall be pursuant to subdivision (a) of Section 2924.* A public declaration of postponement shall also set forth the new date, time, and place of sale and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given. However, the sale shall be conducted no sooner than on the seventh day after the earlier of (1) dismissal of the action or (2) expiration or termination of the injunction, restraining order, or stay that required postponement of the sale, whether by entry of an order by a court of competent jurisdiction, operation of law, or otherwise, unless the injunction, restraining order, or subsequent order expressly directs the conduct of the sale within that seven-day period. For purposes of this subdivision, the seven-day period shall not include the day on which the action is dismissed, or the day on which the injunction, restraining order, or stay expires or is terminated. If the sale had been scheduled to occur, but this subdivision precludes its conduct during that seven-day period, a new notice of postponement shall be given if the sale had been scheduled to occur during that seven-day period. The trustee shall maintain records of each postponement and the reason therefor.

(e) Notwithstanding the time periods established under subdivision (d), if postponement of a sale is based on a stay imposed by Title 11 of the United States Code (bankruptcy), the sale shall be conducted no sooner than the expiration of the stay imposed by that title and the seven-day provision of subdivision (d) shall not apply.

SEC. 11. It is the intent of the Legislature that there be appropriate remedies under this act for violations of the act's provisions.

~~SECTION 1. It is the intent of the 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.~~

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