

AMENDED IN SENATE APRIL 10, 2012

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, 2924.14, 2924.15, *and* 2924.16 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.

The bill would authorize a borrower to seek an injunction of a pending trustee's sale if a notice of sale has been recorded and the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with specified requirements. The bill

would authorize the greater of actual damages or \$10,000 in statutory damages if there is a failure to comply with specified requirements by the mortgagee, trustee, beneficiary, or authorized agent and the property is sold at a foreclosure sale. The bill would authorize the greater of treble damages or \$50,000 in statutory damages if the failure to comply is found to be intentional or reckless or resulted from willful misconduct, as specified.

The bill would establish the Office of Homeowner Protection, which would have responsibility, among other things, for responding to inquiries and complaints from individuals regarding foreclosures and other procedures and requirements as described above, attempting to seek compliance by mortgagees, trustees, beneficiaries, or authorized agents regarding foreclosures and other procedures and requirements as described above, and maintaining an Internet Web site that is capable of receiving inquiries and complaints from individuals and that provides information to the public about publicly available resources intended to help individuals avoid foreclosure. The bill would express the intent of the Legislature that the office be funded by payments made available to the Attorney General via the Special Deposit Fund, created pursuant to specified federal settlement agreements.

(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.~~

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

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

1 SECTION 1. Section 2923.5 of the Civil Code is amended to
2 read:
3 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
4 agent may not record a notice of default pursuant to Section 2924
5 until 30 days after initial contact is made as required by paragraph
6 (2) or 30 days after satisfying the due diligence requirements as
7 described in subdivision ~~(g)~~ (h) and until the requirements of
8 subdivision (g) have been met.
9 (2) A mortgagee, trustee, beneficiary, or authorized agent shall
10 contact the borrower in person or by telephone in order to assess
11 the borrower's financial situation and explore options for the

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

15 ~~(b) Nothing in this subdivision shall be construed in derogation~~
16 ~~of the parties' rights established under Section 3309 of the~~
17 ~~Commercial Code.~~ A notice of default recorded pursuant to Section
18 2924 shall include a declaration of the following:

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

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

27 (3) The mortgagee, ~~trustee~~, beneficiary, or authorized agent has
28 possession of the note and mortgage or deed of trust ~~as well as all~~
29 ~~the assignments and endorsements that~~ and evidence of its right
30 to foreclose, ~~and has attached copies of evidence of all assignments~~
31 ~~and endorsements of the mortgage or deed of trust to the~~
32 ~~declaration including documentation of any assignments and~~
33 ~~endorsements of the mortgage note or deed of trust. This evidence~~
34 ~~must be attached to, or specifically described in, the declaration.~~
35 If this proof cannot be located, the mortgagee, trustee, beneficiary,
36 or authorized agent shall include a separate declaration signed
37 either by an individual having personal knowledge of the facts
38 stated within, or by an individual with authority to bind the
39 mortgagee, trustee, beneficiary, or authorized agent, who certifies
40 that the declaration is based upon records that were made in the

1 regular course of business at or near the time of the events recorded,
2 stating the following:

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

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

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

10 (i) The date of execution.

11 (ii) The parties.

12 (iii) The principal amount of the loan.

13 (iv) The amortization period of the loan.

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

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

19 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
20 already filed the notice of default prior to January 1, 2013, and did
21 not subsequently file a notice of rescission, then the mortgagee,
22 trustee, beneficiary, or authorized agent shall, as part of the notice
23 of sale recorded pursuant to Section 2924f, include a declaration
24 that states the following:

25 (1) That at least 60 days prior to the recording of the notice of
26 sale or as soon thereafter as possible, a written communication
27 was sent to the borrower that included all of the following
28 information:

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

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

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

37 (2) The efforts made, if any, to contact the borrower in the event
38 no contact was made.

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

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

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

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

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

23 (2) Notification that the borrower may receive, upon written
24 request *to the mortgagee, beneficiary, or authorized agent, or to*
25 *any assigned single point of contact*, a copy of the borrower's
26 payment history since the borrower was last less than 60 days past
27 due, a copy of the borrower's loan note, copies of any assignments
28 of the note and of the mortgage or deed of trust that would evidence
29 a right to foreclose on the borrower's property, and, if applicable,
30 the name of the investor that holds the borrower's loan note.

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

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

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

37 (C) The date of the last full payment.

38 (D) The current interest rate in effect for the loan, if the rate is
39 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 *or the contact information for any assigned single point of contact* 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.

(6) *The toll-free telephone number made available by the Office of Homeowner Protection.*

(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 requirements under subdivision (g) have been met and* 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, 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

1 on different days. Telephone calls shall be made to the primary
2 telephone number on file.

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

8 (C) A mortgagee, ~~trustee~~, beneficiary, or authorized agent
9 satisfies the telephone contact requirements of this paragraph if it
10 determines, after attempting contact pursuant to this paragraph,
11 that the borrower's primary telephone number and secondary
12 telephone number or numbers on file, if any, have been
13 disconnected.

14 (3) If the borrower does not respond within two weeks after the
15 telephone call requirements of paragraph (2) have been satisfied,
16 the mortgagee, ~~trustee~~, beneficiary, or authorized agent shall then
17 send a certified letter, with return receipt requested that includes
18 the toll-free telephone number made available by *the Office of*
19 *Homeowner Protection and HUD* to find a HUD-certified housing
20 counseling agency, and if applicable, a deadline for the borrower
21 to submit an initial application for a loan modification.

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

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

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

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

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

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

1 (E) *The toll-free telephone number made available by the Office*
2 *of Homeowner Protection.*

3 (i) Subdivisions (a), (c), (g), and (h) shall not apply if any of
4 the following occurs:

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

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

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

20 SEC. 2. Section 2923.6 is added to the Civil Code, to read:

21 2923.6. (a) *The Legislature finds and declares that any duty*
22 *servicers may have to maximize net present value under their*
23 *pooling and servicing agreements is owed to all parties in a loan*
24 *pool, or to all investors under a pooling and servicing agreement,*
25 *not to any particular party in the loan pool or investor under a*
26 *pooling and servicing agreement, and that a servicer acts in the*
27 *best interests of all parties to the loan pool or investors in the*
28 *pooling and servicing agreement if it agrees to or implements a*
29 *loan modification or workout plan for which both of the following*
30 *apply:*

31 (1) *The loan is in payment default, or payment default is*
32 *reasonably foreseeable.*

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

36 (b) *It is the intent of the Legislature that the mortgagee,*
37 *beneficiary, or authorized agent offer the borrower a loan*
38 *modification or workout plan if the modification or plan is*
39 *consistent with its contractual or other authority.*

(c) 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)

(d) 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.

(e)

(e) 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

1 act, is to be deemed a mortgage, except when in the case of
2 personal property it is accompanied by actual change of possession,
3 in which case it is to be deemed a pledge. Where, by a mortgage
4 created after July 27, 1917, of any estate in real property, other
5 than an estate at will or for years, less than two, or in any transfer
6 in trust made after July 27, 1917, of a like estate to secure the
7 performance of an obligation, a power of sale is conferred upon
8 the mortgagee, trustee, or any other person, to be exercised after
9 a breach of the obligation for which that mortgage or transfer is a
10 security, the power shall not be exercised except where the
11 mortgage or transfer is made pursuant to an order, judgment, or
12 decree of a court of record, or to secure the payment of bonds or
13 other evidences of indebtedness authorized or permitted to be
14 issued by the Commissioner of Corporations, or is made by a public
15 utility subject to the provisions of the Public Utilities Act, until
16 all of the following apply:

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

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

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

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

34 (D) If the default is curable pursuant to Section 2924c, the
35 statement specified in paragraph (1) of subdivision (b) of Section
36 2924c.

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

39 (3) Except as provided in paragraph (4), after the lapse of the
40 three months described in paragraph (2), and the requirements of

1 Sections 2924.9, 2924.10, *and* 2924.11 have been met, the
2 mortgagee, trustee, or other person authorized to take the sale shall
3 give notice of sale, stating the time and place thereof, in the manner
4 and for a time not less than that set forth in Section 2924f.

5 (4) Notwithstanding paragraph (3), the mortgagee, trustee, or
6 other person authorized to take sale may record a notice of sale
7 pursuant to Section 2924f up to five days before the lapse of the
8 three-month period described in paragraph (2), provided that the
9 date of sale is no earlier than three months and 20 days after the
10 recording of the notice of default, and the requirements of Sections
11 2924.9, 2924.10, *and* 2924.11 have been met.

12 (5) Except as provided in subdivisions (c) and (d) of Section
13 2924g, the trustee, mortgagee, or beneficiary, or any of their
14 authorized agents shall provide written notice to the borrower
15 within five calendar days after the postponement of a foreclosure
16 sale, ~~setting forth and, if known to the trustee, mortgagee,~~
17 ~~beneficiary, or any of their authorized agents at the time of the~~
18 ~~notice, the new sale date and time, if any,~~ and, if applicable, any
19 new location, whenever the new sale date is at least 10 calendar
20 days after the date of postponement.

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

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

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

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

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

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

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

13 SEC. 4. Section 2924 of the Civil Code, as amended by Section
14 2 of Chapter 180 of the Statutes of 2010, is repealed.

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

16 2924.9. Within five calendar days after recording a notice of
17 default pursuant to Section 2924, a trustee, mortgagee, beneficiary,
18 or authorized agent shall send a written communication to the
19 borrower that includes all of the following information:

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

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

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

31 (d) *The toll-free telephone number made available by the Office*
32 *of Homeowner Protection.*

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

34 2924.10. (a) ~~When~~ If a borrower submits an application for a
35 loan modification within 60 days after the recording of a notice of
36 default, a mortgagee, ~~trustee~~, beneficiary, or authorized agent shall
37 not record a notice of sale while the loan modification application
38 is pending. Notwithstanding paragraphs (3) and (4) of subdivision
39 (a) of Section 2924, a mortgagee, trustee, beneficiary, or authorized

1 agent shall not record a notice of sale under this section until either
2 of the following:

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

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

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

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

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

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

29 (3) *This section shall not apply if the mortgage, beneficiary, or*
30 *authorized agent has previously determined that the borrower is*
31 *not eligible for modification of that loan pursuant to Section*
32 *2923.6, unless the borrower's application reflects a material*
33 *change in the borrower's financial circumstances since the date*
34 *of the borrower's previous application.*

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

36 2924.11. (a) When a borrower submits an application for a
37 loan modification less than 15 days before a notice of sale may be
38 recorded pursuant to Sections 2924 and 2924f, a mortgagee, trustee,
39 beneficiary, or authorized agent shall not record a notice of sale
40 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.

(c) This section shall not apply if the mortgagee, beneficiary, or authorized agent has previously determined that the borrower is not eligible for modification of that loan pursuant to Section 2923.6 or Section 2924.10, unless the borrower's application reflects a material change in the borrower's financial circumstances since the date of the borrower's previous application.

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.

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

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

6 (D) *The toll-free telephone number made available by the Office*
7 *of Homeowner Protection.*

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

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

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

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

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

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

37 (4) *The toll-free telephone number made available by the Office*
38 *of Homeowner Protection.*

39 (d) If the mortgagee, trustee, beneficiary, or authorized agent
40 denies a borrower's appeal, the denial letter shall include a

1 description of other available loss mitigation, including short sales
2 and deeds in lieu of foreclosure.

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

4 2924.13. (a) A mortgagee, trustee, beneficiary, or authorized
5 agent shall not record a notice of sale under any of the following
6 circumstances:

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

9 (2) A short sale or deed-in-lieu of foreclosure has been approved
10 by all parties, including the first lien investor, the junior lienholder,
11 and the mortgage insurer, as applicable, and proof of funds or
12 financing has been provided to the mortgagee, trustee, beneficiary,
13 or authorized agent.

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

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

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

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

33 (f) The mortgagee, trustee, beneficiary, or authorized agent shall
34 track outcomes and maintain records regarding characteristics,
35 including, but not limited to, debt-to-income ratios of modified
36 payments and the percentage change in monthly payment amounts,
37 and performance of proprietary loan modifications. A mortgagee,
38 trustee, beneficiary, or authorized agent shall provide a description
39 of *modification waterfalls*, eligibility criteria, and modification
40 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 *or a denial is being appealed*, 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 2924.14 is added to the Civil Code, to read:

2924.14. (a) A borrower may seek an order in any court having jurisdiction to enjoin any pending trustee's sale, if a notice of sale has been recorded and the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with the requirements of Section 2923.5, 2923.6, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f. Any injunction shall remain in place until the mortgagee, trustee, beneficiary, or authorized agent has complied with the requirements of Sections 2923.5, 2923.6, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, and 2924f. A borrower who obtains an injunction shall be awarded reasonable attorney's fees and costs.

(b) (1) Following a trustee's sale, a borrower may recover the greater of actual damages or ten thousand dollars (\$10,000) plus reasonable attorney's fees and costs in any court of competent jurisdiction, if the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with the requirements of Section 2923.5, 2923.6, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f.

(2) A court may award a borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000), plus reasonable attorney's fees and costs, if it finds that the violation of Section 2923.5, 2923.6, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f was intentional or reckless or resulted from willful misconduct by a mortgagee, trustee, beneficiary, or authorized agent.

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

(d) Notwithstanding subdivisions (a) and (b), a borrower may not obtain relief under this section for any violation that was technical or de minimis in nature such that it did not impact the

1 borrower's ability to pursue an alternative to foreclosure as
2 provided by this article.

3 (e) It shall be an affirmative defense to any liability for violation
4 of Sections 2923.5, 2923.6, 2924.9, 2924.10, 2924.11, 2924.12,
5 2924.13, and 2924.15, that a signatory to a consent judgment
6 entered in the case entitled *United States of America v. Bank of*
7 *America Corporation*, filed in the Federal District Court for the
8 District of Washington, D.C., case number 1:12-cv-00361 RMC,
9 is in compliance with that consent judgment while the consent
10 judgment is in effect.

11 (f) A third-party encumbrancer shall not be relieved from
12 liability resulting from violations of Section 2923.5, 2923.6, 2924,
13 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f committed
14 by that third-party encumbrancer, which occurred prior to the
15 sale of the subject property to the bona fide purchaser.

16 SEC. 11. Section 2924.15 is added to the Civil Code, to read:

17 2924.15. Unless otherwise provided, Sections 2923.6, 2923.7,
18 2923.9, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, 2924.15,
19 and 2924f, shall apply to mortgages or deeds of trust that are
20 secured by residential real property containing no more than four
21 dwelling units.

22 SEC. 12. Section 2924.16 is added to the Civil Code, to read:

23 2924.16. (a) There shall be established within state government
24 an Office of Homeowner Protection, which shall have the
25 responsibility for all of the following:

26 (1) Responding to inquiries and complaints from individuals
27 regarding the provisions of this article.

28 (2) Attempting to seek compliance by mortgagees, trustees,
29 beneficiaries, or authorized agents with the provisions of this
30 article.

31 (3) Maintaining an Internet Web site that is capable of receiving
32 inquiries and complaints from individuals and that provides
33 information to the public about publicly available resources
34 intended to help individuals avoid foreclosure.

35 (4) Providing an annual report to the Legislature, summarizing
36 its activities during the prior year.

37 (b) It is the intent of the Legislature that the office be funded
38 through payments made available to the Attorney General via the
39 Special Deposit Fund, which was created pursuant to the

1 *settlements approved by the United States District Court for the*
2 *District of Columbia on ____.*

3 ~~SEC. 10.~~

4 *SEC. 13.* Section 2924g of the Civil Code is amended to read:

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

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

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

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

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

37 (c) (1) There may be a postponement or postponements of the
38 sale proceedings, including a postponement upon instruction by
39 the beneficiary to the trustee that the sale proceedings be
40 postponed, at any time prior to the completion of the sale for any

1 period of time not to exceed a total of 365 days from the date set
2 forth in the notice of sale. The trustee shall postpone the sale in
3 accordance with any of the following:

- 4 (A) Upon the order of any court of competent jurisdiction.
- 5 (B) If stayed by operation of law.
- 6 (C) By mutual agreement, whether oral or in writing, of any
7 trustor and any beneficiary or any mortgagor and any mortgagee.
- 8 (D) At the discretion of the trustee.

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

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

39 (e) Notwithstanding the time periods established under
40 subdivision (d), if postponement of a sale is based on a stay

1 imposed by Title 11 of the United States Code (bankruptcy), the
2 sale shall be conducted no sooner than the expiration of the stay
3 imposed by that title and the seven-day provision of subdivision
4 (d) shall not apply.

5 *SEC. 14. The provisions of this article are severable. If any*
6 *provision of this article or its application is held invalid, that*
7 *invalidity shall not affect other provisions or applications that can*
8 *be given effect without the invalid provision or application.*

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