



State of California
Business, Transportation and Housing Agency
DEPARTMENT OF CORPORATIONS

Supporting a Fair and Secure Financial Services Marketplace for all Californians

www.corp.ca.gov

Edmund G. Brown Jr.
Governor

Jan Lynn Owen
California Corporations Commissioner

DATE: December 31, 2012

RELEASE No. 65-FS (Revised)

**NEW MORTGAGE FORECLOSURE LAWS
THAT TAKE EFFECT JANUARY 1, 2013**

On July 11, 2012, Governor Edmund G. Brown Jr. signed into law foreclosure reform legislation known as the California Foreclosure Reduction Act ("Foreclosure Reduction Act," AB 268 (Ch. 86, Stats. 2012) and SB 900 (Ch. 87, Stats. 2012)). The Foreclosure Reduction Act reforms California's non-judicial foreclosure process so that borrowers have greater protection from wrongful foreclosures, and a meaningful opportunity to be considered for, and obtain, a loan modification or other alternative to foreclosure.

Residential lenders and servicers licensed and regulated by the Department of Corporations under the California Residential Mortgage Lending Act ("CRMLA") and the California Finance Lenders Law ("CFLL"), will be impacted by the new law.

The Foreclosure Reduction Act will be effective January 1, 2013. However, many provisions in the Foreclosure Reduction Act will sunset in five years, while other provisions will become operative in five years, on January 1, 2018. Additionally, many provisions only apply to mortgage servicers that have foreclosed on more than 175 homes during the preceding year. Most provisions apply solely to first lien mortgages or deeds of trust secured by owner-occupied property.

This Release provides a summary of key provisions in the Foreclosure Reduction Act that apply to mortgage servicers above and below the 175 threshold. This Release also summarizes key provisions that will become operative on January 1, 2018, which will apply to all mortgage servicers, regardless of foreclosure volume. Additionally, this Release provides a summary of the key elements of other foreclosure laws enacted in 2012.

CRMLA and CFLL licensees will be responsible for maintaining evidence of compliance with all of the new requirements. Such evidence includes, but not be limited to, phone conversation logs, copies of correspondence, notices, declarations, and operations manuals that establish a mortgage servicer's policies and procedures. A licensee's books and records should establish that required correspondence and notices occur within the time periods set forth in the law.

I. Mortgage Servicers with 175 or Fewer Foreclosures

1. Foreclosure Communication Requirements (Civil Code §2923.5 (Section 4))

The sunset date for pre-foreclosure borrower outreach requirements imposed by SB 1137 (Perata, Ch. 69, Stats. 2008) has been removed. A mortgage servicer is required to contact or attempt to contact a borrower before commencing the foreclosure process, and to record a declaration of compliance with the Notice of Default ("NOD"). After January 1, 2013, the borrower outreach requirements apply to all loans, regardless of when those loans were first recorded.

This provision will sunset on January 1, 2018. However, new requirements will be imposed. Please see, "III. Provisions Operative on January 1, 2018" below for further information.

2. Review of Foreclosure Documents (Civil Code §2924.17)

Before commencing foreclosure, a mortgage servicer is required to review competent and reliable evidence to substantiate the borrower's default and its right to foreclose. In addition, every recorded declaration, affidavit, NOD, Notice of Sale ("NOS"), assignment, and substitution of trustee must be accurate and complete, and supported by competent and reliable evidence. This provision does not sunset.

3. Prohibition on Dual Tracking (Civil Code §2923.5 (Section 4) and §2924.18)

A mortgage servicer is prohibited from commencing or continuing the foreclosure process (i.e. recording a NOD or NOS, or conducting a trustee's sale) pending a completed review of a loan modification application submitted by a borrower and until after the borrower has been provided with a written decision about eligibility for a loan modification.

A mortgage servicer is also prohibited from commencing or continuing the foreclosure process if a borrower is in compliance with the terms of an approved foreclosure prevention alternative, or if a foreclosure prevention alternative has been approved by all parties and proof of financing has been provided to the mortgage servicer.

This provision will sunset on January 1, 2018. However, new requirements will be imposed. Please see, "III. Provisions Operative on January 1, 2018" below for further information.

4. Damages (Civil Code §2924.19)

Prior to a trustee's sale, a borrower may bring an injunctive action against a mortgage servicer for a material violation of Civil Code Sections 2923.5 (borrower outreach and declaration of contact or due diligence), 2924.17 (review of foreclosure documents), or 2924.18 (dual track prohibition).

After a trustee's deed upon sale has been recorded, a mortgage servicer may be liable to a borrower for actual damages for material violation of the above-mentioned Civil Code sections. Furthermore, a mortgage servicer may be liable for the greater of treble damages or \$50,000 if the material violation was intentional, reckless or resulted in willful misconduct.

A borrower may be awarded reasonable attorney's fees and costs.

This provision will sunset on January 1, 2018. However, new requirements will be imposed. Please see, "III. Provisions Operative on January 1, 2018" below for further information.

5. Reporting Requirement If Mortgage Servicer Exceeds 175 Threshold (Civil Code §2924.18(c))

A mortgage servicer is required to notify the Department of Corporations within three months after close of the calendar year or annual reporting period when that servicer has exceeded the 175 foreclosure threshold. The Department of Corporations has determined that this notice may be included with the annual report required under the licensee's licensing law. The mortgage servicer becomes subject to the heightened requirements for mortgage servicers with more than 175 foreclosures, six months after the calendar year in which it exceeds the threshold.

This provision will sunset on January 1, 2018. However, new requirements will be imposed. Please see, "III. Provisions Operative on January 1, 2018" below for further information.

6. Written Notice of Postponement of Sale (Civil Code §2924(a)(5))

A mortgage servicer must notify a borrower in writing, within 5 business days following the postponement, whenever a foreclosure sale is postponed for at least 10 business days.

This provision will sunset on January 1, 2018.

II. Mortgage Servicers with More Than 175 Foreclosures**1. Foreclosure Communication Requirements (Civil Code §2923.55)**

The sunset date for pre-foreclosure borrower outreach requirements imposed by SB 1137 (Perata, Ch. 69, Stats. 2008) has been removed. A mortgage servicer

is required to contact or attempt to contact a borrower before commencing the foreclosure process, and to record a declaration of compliance with the NOD. After January 1, 2013, the borrower outreach requirements apply to all loans, regardless of when those loans were first recorded.

This provision will sunset on January 1, 2018. However, new requirements will be imposed. Please see, “III. Provisions Operative on January 1, 2018” below for further information.

2. Review of Foreclosure Documents (Civil Code §2924.17)

Before commencing foreclosure, a mortgage servicer is required to review competent and reliable evidence to substantiate the borrower’s default and its right to foreclose. In addition, every recorded declaration, affidavit, NOD, NOS, assignment, and substitution of trustee must be accurate and complete, and supported by competent and reliable evidence. This provision does not sunset.

3. Prohibition on Dual Tracking (Civil Code §2923.55, §2923.6 (Section 7) and §2924.11 (Section 14))

A mortgage servicer is prohibited from commencing or continuing the foreclosure process while a completed loan modification application submitted by a borrower is pending, until (1) the mortgage servicer makes a written determination that the borrower is not eligible for a loan modification and any appeal period has expired; (2) the borrower does not accept a loan modification offer within 14 days of the offer; or (3) the borrower accepts a loan modification offer, but defaults or breaches the terms.

Additionally, a mortgage servicer is prohibited from commencing or continuing the foreclosure process if a borrower is in compliance with the terms of an approved foreclosure prevention alternative, or if a foreclosure prevention alternative has been approved by all parties and proof of financing has been provided to the servicer.

These provisions will sunset on January 1, 2018. However, new requirements will be imposed. Please see, “III. Provisions Operative on January 1, 2018” below for further information.

4. Single Point of Contact (Civil Code §2923.7)

A mortgage servicer is required to create a “single point of contact” upon the request of a borrower. The single point of contact may be an individual or a team that has the authority to perform specific responsibilities, has knowledge of a borrower’s situation and current status, provides accurate information to a borrower, and coordinates all documents associated with a borrower’s foreclosure prevention alternative. This provision does not sunset.

5. Notice to Borrower that has not Applied for a Loan Modification (Civil Code §2924.9)

Unless a borrower has previously exhausted the loan modification process, within five business days after recording a NOD, a mortgage servicer is required to notify a borrower who has not submitted an application for a loan modification that the borrower may qualify for a loan modification or foreclosure prevention alternative, whether an application must be submitted to be considered, and the process to obtain an application.

This provision will sunset on January 1, 2018.

6. Loan Modification Review Process (Civil Code §2924.10)

A mortgage servicer is required to provide a borrower written acknowledgement of receipt within five business days of receiving a completed loan modification application or any documents connected to a loan modification application.

The initial written acknowledgement of receipt of the loan modification application must include a description of the loan modification process, including an estimate of when a decision will be made and length of time a borrower will have to consider an offer; any deadlines or expiration dates for submitting documents; and any deficiencies in the application.

In circumstances where a borrower was provided a fair opportunity to be evaluated for a loan modification prior to January 1, 2013, a mortgage servicer is not required to evaluate a loan modification application from a borrower unless there has been a material, documented change in the borrower's financial circumstances.

This provision will sunset on January 1, 2018.

7. Loan Modification Application Denial and Appeal (Civil Code §2923.6 (Section 7))

If a loan modification application is denied, a mortgage servicer is required to send a borrower written notice identifying the reasons for denial, including (1) timing and instructions for requesting an appeal; (2) if applicable, reasons for investor disallowance of the loan modification; (3) information related to the net present value calculation, if the denial was based on this calculation; (4) if applicable, a finding of a prior failed loan modification; and (5) a description of other foreclosure prevention alternatives for which the borrower may be eligible.

A mortgage servicer must provide a borrower at least 30 days from the date of a written denial to appeal the denial and provide evidence that the mortgage servicer's determination was in error.

A mortgage servicer is prohibited from recording a NOD or, if a NOD has already been recorded, recording a NOS or conducting a trustee's sale until the later of: (1) 31 days after the borrower is provided written notice of the denial; (2) If the borrower appeals the denial, the later of 15 days after the denial of the appeal or 14 days after a loan modification is offered after appeal, but declined by the borrower; or (3) if a loan modification is offered after appeal and accepted, the date on which the borrower defaults or breaches the terms of the offer.

This provision will sunset on January 1, 2018. However, new requirements will be imposed. Please see, "III. Provisions Operative on January 1, 2018" below for further information.

8. Prohibition on Fees (Civil Code §2924.11 (Section 14))

A mortgage servicer is prohibited from charging application, processing and other fees for a loan modification or other foreclosure prevention alternative. A mortgage servicer is also prohibited from collecting late fees for the period when a loan modification application is under review, when a denial is being appealed, when the borrower is making timely modification payments, or when a foreclosure prevention alternative is being considered or exercised.

This provision will sunset on January 1, 2018.

9. Additional Notices (Civil Code §2923.55)

A mortgage servicer is prohibited from recording a NOD until after the servicer has provided the borrower written notice with (1) a statement that if a borrower is a servicemember or dependent of a servicemember, the borrower may be entitled to certain protections under the federal Servicemembers Civil Relief Act; and (2) a statement that the borrower may request a copy of the promissory note, deed of trust, any assignment of the borrower's mortgage, and the borrower's payment history.

This provision will sunset on January 1, 2018.

10. Other Requirements (Civil Code §2924.11 (Section 14))

A mortgage servicer is required to provide a borrower that has accepted a loan modification offer or foreclosure prevention alternative a copy of the executed agreement. In addition, a mortgage servicer is required to record a rescission of a NOD or cancel a pending trustee's sale, if applicable, upon a borrower executing a permanent foreclosure prevention alternative.

This provision will sunset on January 1, 2018.

11. Damages (Civil Code §2924.12 (Section 16))

Prior to a trustee's sale, a borrower may bring an injunctive action against a mortgage servicer for a material violation of Civil Code Sections 2923.55

(borrower outreach and declaration of contact or due diligence), 2923.6 (dual track prohibition and loan modification application denial and appeal), 2923.7 (single point of contact), 2924.9 (notice to a borrower that has not applied for a loan modification), 2924.10 (loan modification review process), 2924.11 (dual track prohibition and prohibition against application or late fees) or 2924.17 (review of foreclosure documents).

After a trustee's deed upon sale has been recorded, a mortgage servicer may be liable to a borrower for actual damages for the above-mentioned Civil Code sections where the violation was not corrected and remedied prior to the recordation. Furthermore, a mortgage servicer may be liable for the greater of treble damages or \$50,000 if the material violation was intentional, reckless or resulted in willful misconduct.

A borrower may be awarded reasonable attorney's fees and costs.

This provision will sunset on January 1, 2018. However, new requirements will be imposed. Please see, "III. Provisions Operative on January 1, 2018" below for further information.

12. Written Notice of Postponement of Sale (Civil Code §2924(a)(5))

A mortgage servicer is required to notify a borrower in writing within 5 business days following the postponement of a foreclosure sale, whenever the sale is postponed for at least 10 business days.

This provision will sunset on January 1, 2018.

III. Provisions Operative on January 1, 2018

The provisions that will become operative on January 1, 2018, apply to all mortgage servicers, regardless of the number of foreclosures during the preceding year. Below is a summary of key provisions.

1. Foreclosure Communication Requirements (Civil Code §2923.5 (Section 5))

The sunset date for pre-foreclosure borrower outreach requirements imposed by SB 1137 (Perata, Ch. 69, Stats. 2008) has been removed. A mortgage servicer is required to contact or attempt to contact a borrower before commencing the foreclosure process, and to record a declaration of compliance with the NOD. After January 1, 2013, the borrower outreach requirements apply to all loans, regardless of when those loans were first recorded.

2. Prohibition on Dual Tracking (Civil Code §2923.5 (Section 5) and §2924.11 (Section 15))

A mortgage servicer is prohibited from recording a NOS or conducting a trustee's sale pending a completed foreclosure prevention alternative application

submitted by a borrower, and until the borrower has been provided with a written decision about eligibility for the foreclosure prevention alternative.

Additionally, a mortgage servicer is prohibited from commencing the foreclosure process if a borrower is in compliance with the terms of an approved foreclosure prevention alternative or a foreclosure prevention alternative has been approved by all parties and proof of financing has been provided to the servicer.

3. Loan Modification Application Denial and Appeal (Civil Code §2924.11 (Section 15))

If a loan modification application is denied, a mortgage servicer is required to send a borrower written notice identifying the reasons for denial and must include a statement that the borrower may obtain additional documentation supporting the denial decision upon written request.

4. Damages (Civil Code § 2924.12 (Section 17))

Prior to a trustee's sale, a borrower may bring an injunctive action against a mortgage servicer for a material violation of Civil Code Sections 2923.5 (borrower outreach and declaration of contact or due diligence), 2923.7 (single point of contact), 2924.11 (dual track prohibition, loan modification application denial), or 2924.17 (review of competent and reliable foreclosure evidence). After a trustee's deed upon sale has been recorded, a mortgage servicer may be liable to a borrower for actual damages for the above-mentioned Civil Code sections where the violation was not corrected and remedied prior to the recordation. A mortgage servicer may also be liable for the greater of treble damages or \$50,000 if the material violation was intentional, reckless or resulted in willful misconduct. A borrower may be awarded reasonable attorney's fees and costs

5. Single Point of Contact and Notice to Commissioner (Civil Code §2923.7)

The requirement that a mortgage servicer with over 175 foreclosures the prior year provide a borrower with a single point of contact upon request does not sunset. A mortgage servicer must notify the Department of Corporations within three months after close of the calendar year or annual reporting period when that servicer has exceeded the 175 foreclosure threshold, and the mortgage servicer becomes subject to the single point of contact requirements six months after the calendar year in which it exceeds the threshold.

IV. Other Foreclosure Law Changes in 2012

1. Prohibition on Loan Modification Advance Fees

AB 1950 (Chap. 569, Stats. 2012) and SB 980 (Chap. 563, Stats. 2012)

AB 1950 and SB 980 remove the sunset date and make permanent the prohibition on third party loan modification companies charging advance fees.

2. Translated Summaries of Notice of Default and Notice of Sale (AB 1599 (Chap. 556, Stats. 2012), Civil Code Section 2923.3)

AB 1599 requires a mortgagee, trustee, beneficiary, or authorized agent to include a statement in English, Korean, Chinese, Spanish, Tagalog, and Vietnamese, at the top of a copy of a recorded NOD or NOS provided to a borrower, notifying the borrower that a summary of key provisions is attached. The copy of the NOD or the NOS provided to the borrower must include, as attachments, summaries of key provisions of the NOD or the NOS, as applicable, in the same six languages. The translations of the statement and summaries are available on the Department of Corporations' website at: http://www.corp.ca.gov/Laws/Finance_Lenders/Forms.asp.

The requirement to provide the translated summaries is operative April 1, 2013.

3. Extension of Grace Period from Foreclosure for Servicemembers (AB 2475 (Chap. 204, Stats. 2012))

A mortgage servicer must wait a minimum of nine months after a servicemember is discharged before the mortgage servicer may proceed with a NOD on the servicemember's home, except if agreed to by the two parties or if granted by a court.

The Department of Corporations recommends that CRMLA and CFLL licensees read and understand the Foreclosure Reduction Act and the other legislation enacted in 2012 impacting the foreclosure process, and make all changes necessary to ensure compliance by January 1, 2013.

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