

File No. 110468

Committee Item No. _____

Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date April 26, 2011

Cmte Board

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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Completed by: Joy Lamug

Date April 21, 2011

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

1 [Supporting SB 729 - California Homeowner Protection Act]

2
3 **Resolution supporting Senate Bill 729, "The California Homeowner Protection Act."**

4
5 WHEREAS, Record levels of California homeowners continue to lose their homes to
6 foreclosure and;

7 WHEREAS, Banks repossessed 709 San Francisco houses and condos through
8 foreclosure in 2010, a 20 percent increase from 2009; and

9 WHEREAS, The federal government has only voluntary rules encouraging banks
10 participating in its modification programs not to foreclose on homeowners negotiating a loan
11 modification; and

12 WHEREAS, It is commonplace for banks to foreclose on a borrower who is negotiating
13 a loan modification or successfully completing a temporary loan modification; and

14 WHEREAS, Evidence continues to show that lenders have proceeded with
15 foreclosures using improper procedures, and fraudulent documents; and

16 WHEREAS, SB 729 would require lenders to give homeowners applying for a loan
17 modification a yes or no answer on whether they qualify for a loan modification program
18 offered by the lender before starting the formal foreclosure process; and

19 WHEREAS, A lender's failure to provide a yes or no answer before starting the
20 foreclosure process would provide homeowners with limited legal recourse under narrow
21 circumstances and under a one-year statute of limitations; and

22 WHEREAS, A lender would be given an opportunity to correct any errors before
23 litigation can be commenced; now, therefore, be it

24 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
25 hereby supports SB 729; and, be it

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RESOLVED, That the Board of Supervisors of the City and County of San Francisco hereby supports SB 729; and, be it

FURTHER RESOLVED, That the Clerk of the Board of Supervisors is hereby directed to transmit fully-conformed copies of this resolution to the Chair of the Senate Judiciary Committee, Senators Leno and Steinberg and the Governor of the State of California.

Introduced by Senators Leno and Steinberg
(Principal coauthor: Assembly Member Feuer)
(Coauthors: Senators DeSaulnier, Hancock, Liu, and Wolk)
(Coauthors: Assembly Members Davis, Dickinson, and Monning)

February 18, 2011

An act to amend Sections 2923.5 and 2924b of, to amend and repeal Section 2924 of, and to add Sections 2923.4, 2923.5, 2923.7, 2923.73, 2923.74, and 2923.75 to, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 729, as introduced, Leno. Mortgages and deeds of trust: foreclosure.

Existing state and federal law regulate the terms and conditions of mortgages and deeds of trust secured by real property. Existing state law requires, upon a breach of the obligation of a mortgage or deed of trust secured by real property, that the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor, among other acts, prior to exercising a power of sale. Existing state law, until January 1, 2013, prohibits the filing of a notice of default on a mortgage or deed of trust, as specified, secured by owner-occupied real property, as defined, until 30 days after specified parties contact the borrower or 30 days after satisfying due diligence requirements in this regard.

This bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from recording a notice of default unless that party makes reasonable and good faith efforts to evaluate the borrower for all available loss mitigation options to avoid foreclosure. The bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from

recording a notice of default on residential mortgages and deeds of trust, as defined, until various notice requirements and other requirements regarding loan modifications are fulfilled. The bill would include among these requirements informing the borrower of the deadline for applying for a loan modification, which would be prohibited from being earlier than a specified date. The bill would prohibit a mortgagee, trustee, or beneficiary from recording a notice of default on a residential mortgage or deed of trust if a borrower who is eligible for a loan modification submits an application, as specified, unless the mortgagee, trustee, or beneficiary has, in good faith, reviewed the application, rendered a decision on the application, and sent the borrower a denial explanation letter. The bill would provide a process for reviewing a mortgage loan modification application, which would depend, in part, on whether the lender is participating in the federal Making Home Affordable Modification Program. The bill would except certain borrowers from these requirements. The bill would require that a borrower who initiates an application for a loan modification according to the procedures of the mortgagee, beneficiary, or authorized agent, and who is denied a loan modification, to receive a denial explanation letter stating the reason or reasons for the denial, as specified.

The bill would require a mortgage servicer, as defined, to whom the provisions described above apply, to perform specified actions as part of foreclosing on a residential mortgage or deed of trust, including compiling a record documenting compliance with those provisions, which would be signed, certified, and transmitted to the foreclosure trustee or authorized agent. The bill would require the declaration of compliance to be included or attached to every notice of default recorded, as specified, and a notice of default recorded without the compliance declaration would be void. The bill would prescribe a form for the declaration and would require that the declaration substantially comply with it. The bill would permit an eligible borrower to enjoin a trustee sale if provisions of the bill are not satisfied, and would authorize a borrower to recover damages, attorney's fees, and costs, as specified, if the property is sold without compliance with the bill's requirements. The bill would permit the Attorney General to enforce these provisions. The bill would also establish other penalties for certain acts, including for a false declaration of a lost note representing a mortgage or deed of trust. The bill would provide that any person licensed by the State of California who violates the bill's provisions is deemed to have violated that person's licensing law. The bill would require certain information

to be recorded with a notice of default and to be provided with the notice of default sent to a borrower.

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 2923.4 is added to the Civil Code, to
2 read:

3 2923.4. A mortgagee, trustee, beneficiary, or authorized agent
4 shall not record a notice of default pursuant to Section 2924 unless
5 the mortgagee, trustee, beneficiary, or authorized agent makes
6 reasonable and good faith efforts to evaluate the borrower for all
7 available loss mitigation options to avoid foreclosure.
8 Notwithstanding anything to the contrary, this section shall not be
9 construed to require a mortgagee, trustee, beneficiary, or authorized
10 agent to act in a manner inconsistent with the terms of any
11 applicable contract for the servicing of the loan at issue.

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

13 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
14 agent ~~may~~ *shall* not file ~~record~~ a notice of default pursuant to
15 Section 2924 until 30 days after initial contact is made as required
16 by paragraph (2) or 30 days after satisfying the due diligence
17 requirements as described in subdivision (g), *and until the*
18 *requirements of Section 2923.7, if applicable, have been satisfied.*

19 (2) A mortgagee, beneficiary, or authorized agent shall contact
20 the borrower in person or by telephone in order to assess the
21 borrower's financial situation and explore options for the borrower
22 to avoid foreclosure. During the initial contact, the mortgagee,
23 beneficiary, or authorized agent shall advise the borrower that he
24 or she has the right to request a subsequent meeting and, if
25 requested, the mortgagee, beneficiary, or authorized agent shall
26 schedule the meeting to occur within 14 days. The assessment of
27 the borrower's financial situation and discussion of options may
28 occur during the first contact, or at the subsequent meeting
29 scheduled for that purpose. In either case, the borrower shall be
30 provided the toll-free telephone number made available by the
31 United States Department of Housing and Urban Development
32 (HUD) to find a HUD-certified housing counseling agency, *and,*
33 *if applicable, a deadline for the borrower to submit an initial*

1 *application for a loan modification and receive the associated*
2 *protections of state law, which shall be at least 45 days after the*
3 *date the of initial telephonic or in-person contact. Any meeting*
4 *may occur telephonically.*

5 (b) A notice of default ~~filed recorded~~ pursuant to Section 2924
6 shall include ~~a declaration that the mortgagee, beneficiary, or~~
7 ~~authorized agent has contacted the borrower, has tried with due~~
8 ~~diligence to contact the borrower as required by this section, or~~
9 ~~that no contact was required pursuant to subdivision (b) the~~
10 *declaration of compliance described in Section 2923.74.*

11 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
12 already filed the notice of default prior to the enactment of this
13 section and did not subsequently file a notice of rescission, then
14 the mortgagee, trustee, beneficiary, or authorized agent shall, as
15 part of the notice of sale filed pursuant to Section 2924f, include
16 a declaration that either:

17 (1) States that the borrower was contacted to assess the
18 borrower's financial situation and to explore options for the
19 borrower to avoid foreclosure.

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

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

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

27 (f) A borrower may designate, with consent given in writing, a
28 HUD-certified housing counseling agency, attorney, or other
29 advisor to discuss with the mortgagee, beneficiary, or authorized
30 agent, on the borrower's behalf, the borrowers financial situation
31 and options for the borrower to avoid foreclosure. That contact
32 made at the direction of the borrower shall satisfy the contact
33 requirements of paragraph (2) of subdivision (a). Any loan
34 modification or workout plan offered at the meeting by the
35 mortgagee, beneficiary, or authorized agent is subject to approval
36 by the borrower.

37 (g) ~~Subject to the requirements of Section 2923.7, a notice~~
38 ~~of default may be filed recorded~~ pursuant to Section 2924 when
39 a mortgagee, beneficiary, or authorized agent has not contacted a
40 borrower as required by paragraph (2) of subdivision (a) provided

1 that the failure to contact the borrower occurred despite the due
2 diligence of the mortgagee, beneficiary, or authorized agent. For
3 purposes of this section, "due diligence" shall require and mean
4 all of the following:

5 (1) A mortgagee, beneficiary, or authorized agent shall first
6 attempt to contact a borrower by sending a first-class letter that
7 includes the following:

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

10 (B) *If applicable, a deadline for the borrower to submit an initial*
11 *application for a loan modification and receive the associated*
12 *protections of state law, which shall be at least 45 days after the*
13 *date of this letter or 45 days after the date the mortgagee,*
14 *beneficiary, or authorized agent made initial contact with the*
15 *borrower pursuant to paragraph (2) of subdivision (a) of Section*
16 *2923.5, whichever is earlier.*

17 (2) (A) After the letter has been sent, the mortgagee,
18 beneficiary, or authorized agent shall attempt to contact the
19 borrower by telephone at least three times at different hours and
20 on different days. Telephone calls shall be made to the primary
21 telephone number on file.

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

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

32 (3) If the borrower does not respond within two weeks after the
33 telephone call requirements of paragraph (2) have been satisfied,
34 the mortgagee, beneficiary, or authorized agent shall then send a
35 certified letter, with return receipt requested: *that includes:*

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

38 (B) *If applicable, a deadline for the borrower to submit an initial*
39 *application for a loan modification and receive the associated*
40 *protections of state law, which shall be at least 45 days after the*

1 *date of the letter described in paragraph (1) of subdivision (g) or*
2 *45 days after the date the mortgagee, beneficiary, or authorized*
3 *agent made initial contact with the borrower pursuant to*
4 *paragraph (2) of subdivision (a) of Section 2923.5, whichever is*
5 *earlier.*

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

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

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

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

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

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

25 (h) Subdivisions (a), (c), and (g) shall not apply if any of the
26 following occurs:

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

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

36 (3) A case has been filed by the borrower under Chapter 7, 11,
37 12, or 13 of Title 11 of the United States Code and the bankruptcy
38 court has not entered an order closing or dismissing the bankruptcy
39 case, or granting relief from a stay of foreclosure.

1 (i) This section shall apply only to mortgages or deeds of trust
2 recorded from January 1, 2003, to December 31, 2007, inclusive,
3 that are secured by owner-occupied residential real property
4 containing no more than four dwelling units. For purposes of this
5 subdivision, "owner-occupied" means that the residence is the
6 principal residence of the borrower as indicated to the lender in
7 loan documents.

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

11 SEC. 3. Section 2923.5 is added to the Civil Code, to read:

12 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
13 agent shall not record a notice of default pursuant to Section 2924
14 until either 46 days after contacting the borrower in writing as
15 required by paragraph (2) or until the requirements of Section
16 2923.7 have been satisfied, whichever is later.

17 (2) Prior to recording a notice of default pursuant to Section
18 2924, a mortgagee, trustee, beneficiary, or authorized agent shall
19 send the borrower a certified letter, with return receipt requested,
20 that includes the toll-free telephone number made available by
21 HUD to find a HUD-certified housing counseling agency; and, if
22 applicable, a description of the options that may be available to
23 the borrower if he or she wishes to avoid foreclosure, and
24 instructions setting forth the steps to take to pursue those options,
25 including, if applicable, a deadline for the borrower to submit an
26 initial application for a loan modification and receive the associated
27 protections of state law, which shall be at least 45 days after the
28 date the letter is received.

29 (b) A notice of default recorded pursuant to Section 2924 shall
30 include the declaration of compliance described in Section 2923.74.

31 (c) (1) The mortgagee, beneficiary, or authorized agent shall
32 provide a means for the borrower to contact it in a timely manner,
33 including a toll-free telephone number that will provide access to
34 a live representative during business hours.

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

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

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

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

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

9 (d) This section shall apply only to mortgages or deeds of trust
10 secured by owner-occupied residential real property containing
11 no more than four dwelling units. For purposes of this
12 subdivision, "owner-occupied" means that the residence is the
13 principal residence of the borrower as indicated to the lender in
14 the loan documents.

15 (e) This section shall go into effect on January 1, 2013.

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

17 2923.7. (a) If an eligible borrower initiates a loan modification
18 application on or before the 90th day of delinquency on the
19 mortgage loan at issue or the 45th day after the mortgagee, trustee,
20 or beneficiary or authorized agent makes initial contact with the
21 borrower pursuant to Section 2923.5, whichever is later, the
22 mortgagee, trustee, or beneficiary shall not record a notice of
23 default unless and until it has, in good faith, reviewed the
24 application, rendered a decision on the application, and sent the
25 borrower a denial explanation letter as described in Section
26 2923.73.

27 (b) If a borrower initiates an application for a loan modification
28 by the deadline described in subdivision (a), but does not include
29 all of the documentation or information the mortgagee, beneficiary,
30 or authorized agent requires in order to consider the borrower for
31 a loan modification, the mortgagee, beneficiary, or authorized
32 agent shall provide the borrower with a written notice that lists
33 any supplemental documentation or information required, and
34 includes the deadline for providing that documentation or
35 information, which shall not be less than 30 calendar days from
36 the date the borrower receives the notice.

37 (c) If an eligible borrower initiates a loan modification
38 application by 30 days after receiving the statutorily required copy
39 of the notice of default by certified mail, the mortgagee, trustee,
40 or beneficiary shall not record a notice of sale until 10 business

1 days after it has, in good faith, reviewed the application, rendered
2 a decision on the application, and sent the borrower a denial
3 explanation letter as described in Section 2923.73.

4 (d) If the mortgagee, beneficiary, or authorized agent has signed
5 a Making Home Affordable Servicer Participation Agreement with
6 the Federal National Mortgage Association or is otherwise required
7 to review the borrower's loan under the Making Home Affordable
8 Modification Program (HAMP) guidelines, compliance with
9 applicable HAMP rules regarding deadlines and timeframes for
10 the borrower to submit and complete a loan modification
11 application shall satisfy the requirements of this section.

12 (e) Notwithstanding anything to the contrary, nothing in this
13 section shall be construed to require a mortgage servicer to perform
14 services in a manner inconsistent with the terms of any applicable
15 contract for the servicing of the mortgage loan at issue.

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

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

21 (2) The mortgagee, beneficiary, or authorized agent does not
22 offer any loan modifications.

23 (3) The borrower is not eligible to be considered for a loan
24 modification.

25 (g) This subdivision shall not be construed to diminish in any
26 way the obligations of a mortgagee, trustee, beneficiary, or
27 authorized agent that has signed a Making Home Affordable
28 Servicer Participation Agreement with the Federal National
29 Mortgage Association or is otherwise required to review a loan
30 under HAMP guidelines.

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

37 SEC. 5. Section 2923.73 is added to the Civil Code, to read:

38 2923.73. (a) If a borrower initiates an application for a loan
39 modification according to the procedures of the mortgagee,
40 beneficiary, or authorized agent, and the mortgagee, beneficiary,

1 or authorized agent denies either a permanent loan modification
2 or a federal Making Home Affordable Modification Program
3 (HAMP) trial period plan, the mortgagee, beneficiary, or authorized
4 agent shall send the borrower by certified mail, no later than 10
5 business days following the denial decision, a denial explanation
6 letter that states the reason or reasons for the denial.

7 (1) If the loan modification is denied because the borrower failed
8 to provide all required verification documents or information by
9 the applicable deadline as set forth in subdivision (b) of Section
10 2923.7, the letter shall indicate the date by which the borrower
11 was directed to provide the documents or information, list the
12 documents or information that were not provided, and state that
13 the borrower's request for a loan modification has been denied for
14 this reason.

15 (2) If the borrower submits all required written application
16 materials for a loan modification by the applicable deadline as set
17 forth in subdivision (b) of Section 2923.7, and the application is
18 denied, the denial explanation letter shall include all of the
19 following information in English or, if communications with the
20 borrower have been primarily in one of the languages set forth in
21 subdivision (b) of Section 1632, then in that language:

22 (A) The date the mortgagee, beneficiary, or authorized agent
23 received the final materials required in order to complete its review
24 of the borrower's application for a loan modification.

25 (B) The date on which the mortgagee, beneficiary, or authorized
26 agent made the decision to deny the borrower's application for a
27 loan modification.

28 (C) If the mortgagee, beneficiary, or authorized agent was
29 required to consider the borrower for a loan modification under
30 HAMP guidelines, the information required to be provided in the
31 borrower notice described in the most current version of the
32 Making Home Affordable Servicer Handbook and any subsequent
33 amendments thereto.

34 (D) All of the reasons the borrower did not qualify for a loan
35 modification, including, as applicable, the following:

36 (i) If the denial decision is based on any investor guideline or
37 restriction on loan modifications, a description of the guideline or
38 restriction that resulted in the denial decision with a copy of the
39 applicable provision in the pooling and servicing agreement
40 evidencing the guideline or restriction.

1 (ii) If the denial decision is based on the borrower's income or
2 expenses, the income or expense figures used in determining the
3 borrower's qualification for a loan modification, including, at a
4 minimum, borrower's gross and net monthly income, property
5 taxes, and hazard insurance premiums.

6 (iii) If the denial decision is based on a determination that the
7 net present value of the income stream expected from the modified
8 loan is not greater than the net present value of the income stream
9 that is expected from the loan without modification, all of the
10 inputs, assumptions, and calculations used to make that
11 determination.

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

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

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

25 (G) Instructions regarding how to contact the mortgagee,
26 beneficiary, or authorized agent about the denial of the loan
27 modification.

28 (b) If a borrower is denied a loan modification, and the
29 mortgagee, beneficiary, or authorized agent sends a denial
30 explanation letter in compliance with this section, the mortgagee,
31 trustee, beneficiary, or authorized agent may proceed to record a
32 notice of default even if the borrower initiates a dispute relating
33 to the denial and the dispute has not yet been resolved.

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

40 SEC. 6. Section 2923.74 is added to the Civil Code, to read:

1 2923.74. (a) After the requirements of Sections 2923.5, 2923.7,
2 and 2923.73, as applicable, have been satisfied, a mortgage servicer
3 shall do the following in order to initiate the foreclosure process:

4 (1) For purposes of completing the declaration of compliance
5 described in paragraph (2), compile in one place a record
6 demonstrating that the initial contact of subdivision (a) of Section
7 2923.5 or the due diligence requirements of subdivision (g) Section
8 2923.5 have been completed. This record shall include the dates
9 and times of, and addresses and telephone numbers used for, the
10 contact or attempted contacts with the borrower, as well as a record
11 of the good faith efforts undertaken pursuant to Section 2923.4
12 and 2923.7. The record shall be made available to the borrower
13 within 10 business days of the request if requested in writing after
14 a notice of default has been recorded.

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

26 (3) The declaration of compliance shall be substantially similar
27 to the following form:
28

29 DECLARATION OF COMPLIANCE

30 I. BORROWER CONTACT

31 [Complete Sections A and B until December 31, 2012 only].

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

34 Cal. Civil Code Sec. 2923.5(h).

35 Cal. Civil Code Sec. 2923.5(i).

36 If item (I)(A) is checked, no further information regarding
37 borrower contact is required. If item (I)(A) is not checked, complete
38 item (I)(B).

39 B. This loan is subject to Cal. Civil Code Sec. 2923.5, and the
40 mortgagee, beneficiary, or authorized agent has complied with the

1 requirements of Cal. Civil Code Sec. 2923.5 by satisfying the
2 applicable contact or due diligence requirements described in Cal.
3 Civil Code Sec. 2923.5(a) or (g). If checked, insert the date that
4 the applicable borrower contact requirements were completed here:
5

6 [Complete Sections C and D beginning on January 1, 2013 only].

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

9 Cal. Civil Code Sec. 2923.5(d).

10 D. This loan is subject to Cal. Civil Code Sec. 2923.5, and the
11 mortgagee, beneficiary, or authorized agent has complied with the
12 requirements of Cal. Civil Code Sec. 2923.5(a)(2) and 2923.5(c).
13 If checked, insert the date that the certified letter required by Sec.
14 2923.5(a)(2) was sent here:

15 II. FORECLOSURE AVOIDANCE REVIEW

16 A. This loan is not subject to Cal. Civil Code Sec. 2923.7,
17 pursuant to (check all that apply):

18 Cal. Civil Code Sec. 2923.7(f)(1)(A).

19 Cal. Civil Code Sec. 2923.7(f)(1)(B).

20 Cal. Civil Code Sec. 2923.7(h).

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

24 B. This loan is subject to Cal. Civil Code Sec. 2923.7 and
25 (check only one):

26 The borrower was evaluated for a loan modification, was not
27 approved, and the mortgagee, beneficiary, or authorized agent sent
28 the borrower a denial explanation letter in compliance with the
29 requirements of Cal. Civil Code Sec. 2923.73(a)(2).

30 The borrower did not submit all required written application
31 materials by the applicable deadline, and the mortgagee,
32 beneficiary, or authorized agent sent the borrower a denial
33 explanation letter in compliance with the requirements of Cal.
34 Civil Code Sec. 2923.73(a)(1).

35 The borrower did not initiate an application for a loan
36 modification by the applicable deadline.

37 The borrower was offered a HAMP trial period plan, but did
38 not accept the trial period plan or did not complete the plan.

39 The borrower was offered a permanent loan modification, but
40 the borrower did not accept the modification offered.

1 The borrower was offered and accepted a permanent loan
2 modification, but did not comply with the terms of the
3 modification.

4 The borrower communicated to the mortgagee, beneficiary,
5 or authorized agent that he or she does not intend to apply for a
6 loan modification.

7 III. PROOF OF OWNERSHIP

8 Attached is a copy of the note and all assignments and
9 endorsements of the note, along with a declaration attesting to the
10 existence and possession of the original note as well as all the
11 assignments and endorsements, and certifying ownership of the
12 mortgage and the right to foreclose.

13 The trustee, mortgagee, beneficiary, or any of their authorized
14 agents are not reasonably able to obtain possession of the note
15 and/or all assignments and endorsements thereof. Attached is a
16 declaration of lost note that complies with the requirements of
17 Section 2924(a)(1)(D) of the Civil Code.

18
19 (b) This section shall apply only to mortgages or deeds of trust
20 that are secured by owner-occupied residential real property
21 containing no more than four dwelling units. For purposes of this
22 subdivision, "owner-occupied" means that the residence is the
23 principal residence of the borrower as indicated to the lender in
24 the loan documents.

25 (c) For purposes of this section, "mortgage servicer" shall mean
26 a person or entity responsible for the day-to-day management of
27 a mortgage loan account, including collecting and crediting
28 periodic loan payments, handling any escrow account or enforcing
29 mortgage loan terms either as the holder of the loan note or on
30 behalf of holder of the loan note.

31 SEC. 7. Section 2923.75 is added to the Civil Code, to read:

32 2923.75. (a) If a borrower is eligible to apply for a loan
33 modification and the mortgagee, trustee, beneficiary, or authorized
34 agent records a notice of sale without completing its evaluation of
35 the borrower's timely completed loan modification application or
36 waiting for the borrower's deadline for submitting a loan
37 modification application to pass or fails to send a denial explanation
38 letter that materially complies with the requirements of Section
39 2923.73, the borrower may seek an order in any court having

1 jurisdiction to enjoin any pending trustee's sale until any of these
2 requirements not previously satisfied are satisfied.

3 (b) If a borrower is eligible to apply for a loan modification and
4 the mortgagee, trustee, beneficiary, or authorized agent either
5 records a notice of default without completing its evaluation of
6 the borrower's timely completed loan modification application or
7 without waiting for the borrower's deadline for submitting a loan
8 modification application to pass; denies a loan modification
9 application for failure to provide required verification documents
10 or information after failing to provide the borrower with a deadline
11 that complies with subdivision (b) of Section 2923.7 or after failing
12 to honor that deadline; or fails to send a denial explanation letter
13 that materially complies with the requirements of Section 2923.73,
14 and the mortgagee, trustee, beneficiary, or authorized agent causes
15 the property at issue to be sold at a trustee's sale, the borrower
16 may pursue any one of the following options within one year
17 following the trustee's sale, as applicable, against the mortgagee,
18 trustee, beneficiary, or authorized agent:

19 (1) If the property at issue is sold to a bona fide purchaser at a
20 trustee sale conducted in accordance with Section 2924f, the
21 borrower may recover the greater of treble actual damages or
22 statutory damages in the amount of fifteen thousand dollars
23 (\$15,000), plus reasonable attorney's fees and costs.

24 (2) If, prior to the initiation of an action under this section, the
25 property at issue is sold to a bona fide purchaser by the foreclosing
26 party subsequent to a trustee sale conducted in accordance with
27 Section 2924f in which title was transferred to the foreclosing
28 party, the borrower may recover the greater of treble actual
29 damages or statutory damages in the amount of fifteen thousand
30 dollars (\$15,000), plus reasonable attorney's fees and costs. If the
31 mortgagee, trustee, beneficiary, or authorized agent had actual
32 notice of the borrower's claim under this section prior to selling
33 the property to a bona fide purchaser, the borrower shall be entitled
34 to recover statutory damages in the amount of twenty thousand
35 dollars (\$20,000), in addition to other damages recoverable under
36 this paragraph, plus reasonable attorney's fees and costs.

37 (3) (A) If title to the property at issue is transferred to the
38 foreclosing party at a trustee sale conducted in accordance with
39 Section 2924f, but a subsequent sale to a bona fide purchaser, as
40 described in paragraph (2), has not occurred, the borrower may

1 bring an action to void the foreclosure sale, for an award of
2 attorney's fees and costs, and to obtain an injunction of the type
3 described in subparagraph (B).

4 (B) Pursuant to subparagraph (A), a borrower may seek an
5 injunction requiring the mortgagee, trustee, beneficiary, or
6 authorized agent to comply, at least 30 days prior to recording a
7 notice of sale, with any requirement, not previously satisfied, of
8 Section 2923.5, 2923.7, 2923.73, or 2923.74, or any similar
9 requirement that the court deems appropriate in the interest of
10 justice. The injunction shall also require the mortgagee, trustee,
11 beneficiary, or authorized agent to file a declaration affirming
12 compliance with the requirements of the injunction together with
13 the notice of sale.

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

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

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

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

27 (C) Materially comply with all the requirements of Section
28 2923.5, 2923.7, 2923.73, or 2923.74, as applicable, that were not
29 previously satisfied, and either offer the borrower a loan
30 modification if the borrower qualifies for one, or send the borrower
31 a written communication informing the borrower of the steps that
32 were taken and the outcome, including any reason for the denial
33 of a loan modification, if applicable, at least 30 days before
34 recording a notice of sale.

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

39 (A) Prior to taking any steps under subparagraph (B), the
40 mortgagee, trustee, beneficiary, or authorized agent shall send the

1 borrower a written communication informing the borrower that it
2 will not proceed with an eviction until it has completed certain
3 steps, as set forth in the letter.

4 (B) The mortgagee, trustee, beneficiary, or authorized agent
5 shall materially comply with all of the requirements of Sections
6 2923.5, 2923.7, 2923.73, and 2923.74, as applicable, that were not
7 previously satisfied, and send the borrower a written
8 communication informing the borrower of the steps that were taken
9 and the outcome, including any reason for the denial of a loan
10 modification, if applicable. The mortgagee, trustee, beneficiary,
11 or authorized agent shall wait 30 days after completing those
12 requirements before filing an unlawful detainer action against the
13 borrower. However, if the mortgagee, trustee, beneficiary, or
14 authorized agent determines that the borrower qualifies for a loan
15 modification, it shall rescind the sale and offer the borrower the
16 loan modification.

17 (d) (1) If the mortgagee, trustee, beneficiary, or authorized
18 agent fails to record a completed declaration of compliance
19 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
20 of Section 2923.74, a borrower may recover statutory damages of
21 up to ten thousand dollars (\$10,000), but not less than one thousand
22 five hundred dollars (\$1,500), from the mortgagee, trustee,
23 beneficiary, or authorized agent.

24 (2) If the mortgagee, trustee, beneficiary, or authorized agent
25 submits a materially false declaration of compliance, including
26 any declaration of lost note, a borrower may recover statutory
27 damages of up to twenty-five thousand dollars (\$25,000), but not
28 less than ten thousand dollars (\$10,000), from the mortgagee,
29 trustee, beneficiary, or authorized agent, plus attorney's fees and
30 costs.

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

36 (e) (1) Notwithstanding anything in this section, a borrower
37 shall not have a cause of action under this section for any failure
38 or error that is technical or de minimis in nature.

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

1 (f) (1) The provisions of Section 2923.5, 2923.7, 2923.73,
2 2923.74, 2924, or 2924b are also enforceable by the Attorney
3 General. Any person, including a partner or officer of the
4 mortgagee, trustee, beneficiary, or authorized agent, who violates
5 any provision of this act, shall be subject to a civil penalty of not
6 more than ten thousand dollars (\$10,000) for each violation, except
7 as stated in paragraph (2).

8 (2) (A) Any trustee, beneficiary, or authorized agent that
9 submits a false or fraudulent declaration of lost note pursuant to
10 subparagraph (D) of paragraph (1) of subdivision (a) of Section
11 2924 shall be subject to a civil penalty of twenty-five thousand
12 dollars (\$25,000) for each violation.

13 (B) If the mortgagee, trustee, beneficiary, or authorized agent
14 had actual notice of a legal claim pursuant to this section prior to
15 selling the property to a bona fide purchaser subsequent to a trustee
16 sale conducted in accordance with Section 2924f in which title
17 was transferred to the foreclosing party, the party shall be subject
18 to a civil penalty of twenty-five thousand dollars (\$25,000) for
19 each violation.

20 (3) The Attorney General may also bring a civil action for
21 injunctive relief, and may include in the action a claim for
22 restitution, disgorgement, or damages on behalf of the consumers
23 subject to the act or practice constituting the subject matter of the
24 action. The Attorney General may include in any action authorized
25 by this section, a claim for costs, including reasonable attorney's
26 fees and expenses and the court shall have jurisdiction to award
27 relief, authorized by this section and any other additional relief.

28 (g) Any person licensed by the State of California who violates
29 any provision of Section 2923.5, 2923.7, 2923.73, 2923.74, 2924,
30 or 2924b shall be deemed to have violated that person's licensing
31 law, and shall be subject to enforcement action by its licensing
32 agency.

33 SEC. 8. Section 2924 of the Civil Code, as amended by Section
34 1 of Chapter 180 of the Statutes of 2010, is amended to read:

35 2924. (a) Every transfer of an interest in property, other than
36 in trust, made only as a security for the performance of another
37 act, is to be deemed a mortgage, except when in the case of
38 personal property it is accompanied by actual change of possession,
39 in which case it is to be deemed a pledge. Where, by a mortgage
40 created after July 27, 1917, of any estate in real property, other

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

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

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

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

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

30 (D) *Proof of ownership of the mortgage or deed of trust note*
31 *attached to the notice of default and noted on the declaration of*
32 *compliance required by Section 2923.74. This proof shall include*
33 *a copy of the mortgage or deed of trust note, and evidence of all*
34 *assignments and endorsements of the mortgage or deed of trust*
35 *note and mortgage or deed of trust, along with a declaration*
36 *attesting to the existence and possession of the note as well as all*
37 *the assignments and endorsements, and certifying ownership of*
38 *the mortgage or deed of trust and the right to foreclose. If this*
39 *proof cannot be located, the mortgagee, trustee, beneficiary, or*
40 *authorized agent shall attach a declaration signed either by an*

1 individual having personal knowledge of the facts stated within,
2 or by an individual with authority to bind the mortgagee, trustee,
3 beneficiary, or authorized agent, who certifies that the declaration
4 is based upon records that were made in the regular course of
5 business at or near the time of the events recorded, stating the
6 following:

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

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

12 (iii) A description of the terms of the note and any riders
13 attached thereto, including, at a minimum:

14 (I) The date of execution.

15 (II) The parties.

16 (III) The principal amount of the loan.

17 (IV) The amortization period of the loan.

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

22 (VI) The expiration date of any interest-only period, if
23 applicable.

24 (iv) Nothing in this subparagraph shall be construed in
25 derogation of the parties' rights established under Section 3-309
26 of the Uniform Commercial Code or any similar rights established
27 under California law.

28 (D)

29 (E) If the default is curable pursuant to Section 2924c, the
30 statement specified in paragraph (1) of subdivision (b) of Section
31 2924c.

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

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

39 (4) Notwithstanding paragraph (3), the mortgagee, trustee, or
40 other person authorized to take sale may file a notice of sale

1 pursuant to Section 2924f up to five days before the lapse of the
2 three-month period described in paragraph (2), provided that the
3 date of sale is no earlier than three months and 20 days after the
4 filing of the notice of default.

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

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

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

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

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

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

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

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

38 SEC. 9. Section 2924 of the Civil Code, as amended by Section
39 2 of Chapter 180 of the Statutes of 2010, is repealed.

1 ~~2924. (a) Every transfer of an interest in property, other than~~
2 ~~in trust, made only as a security for the performance of another~~
3 ~~act, is to be deemed a mortgage, except when in the case of~~
4 ~~personal property it is accompanied by actual change of possession,~~
5 ~~in which case it is to be deemed a pledge. Where, by a mortgage~~
6 ~~created after July 27, 1917, of any estate in real property, other~~
7 ~~than an estate at will or for years, less than two, or in any transfer~~
8 ~~in trust made after July 27, 1917, of a like estate to secure the~~
9 ~~performance of an obligation, a power of sale is conferred upon~~
10 ~~the mortgagee, trustee, or any other person, to be exercised after~~
11 ~~a breach of the obligation for which that mortgage or transfer is a~~
12 ~~security, the power shall not be exercised except where the~~
13 ~~mortgage or transfer is made pursuant to an order, judgment, or~~
14 ~~decree of a court of record, or to secure the payment of bonds or~~
15 ~~other evidences of indebtedness authorized or permitted to be~~
16 ~~issued by the Commissioner of Corporations, or is made by a public~~
17 ~~utility subject to the provisions of the Public Utilities Act, until~~
18 ~~all of the following apply:~~

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

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

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

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

36 ~~(D) If the default is curable pursuant to Section 2924e, the~~
37 ~~statement specified in paragraph (1) of subdivision (b) of Section~~
38 ~~2924e.~~

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

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

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

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

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

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

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

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

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

37 (e) There is a rebuttable presumption that the beneficiary
38 actually knew of all unpaid loan payments on the obligation owed
39 to the beneficiary and secured by the deed of trust or mortgage
40 subject to the notice of default. However, the failure to include an

1 ~~actually known default shall not invalidate the notice of sale and~~
2 ~~the beneficiary shall not be precluded from asserting a claim to~~
3 ~~this omitted default or defaults in a separate notice of default.~~

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

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

6 2924b. (a) Any person desiring a copy of any notice of default
7 and of any notice of sale under any deed of trust or mortgage with
8 power of sale upon real property or an estate for years therein, as
9 to which deed of trust or mortgage the power of sale cannot be
10 exercised until these notices are given for the time and in the
11 manner provided in Section 2924 may, at any time subsequent to
12 recordation of the deed of trust or mortgage and prior to recordation
13 of notice of default thereunder, cause to be filed for record in the
14 office of the recorder of any county in which any part or parcel of
15 the real property is situated, a duly acknowledged request for a
16 copy of the notice of default and of sale. This request shall be
17 signed and acknowledged by the person making the request,
18 specifying the name and address of the person to whom the notice
19 is to be mailed, shall identify the deed of trust or mortgage by
20 stating the names of the parties thereto, the date of recordation
21 thereof; and the book and page where the deed of trust or mortgage
22 is recorded or the recorder's number, and shall be in substantially
23 the following form:

24
25 "In accordance with Section 2924b, Civil Code, request is hereby
26 made that a copy of any notice of default and a copy of any notice of sale
27 under the deed of trust (or mortgage) recorded _____, _____, in Book
28 _____ page _____ records of _____ County, (or filed for record with
29 recorder's serial number _____, _____ County) California, executed
30 by _____ as trustor (or mortgagor) in which _____ is named as
31 beneficiary (or mortgagee) and _____ as trustee be mailed to
32 _____ at _____

33 Name Address

34 NOTICE: A copy of any notice of default and of any notice of sale will be
35 sent only to the address contained in this recorded request. If your address
36 changes, a new request must be recorded.

37 Signature _____"
38

39 Upon the filing for record of the request, the recorder shall index
40 in the general index of grantors the names of the trustors (or

1 mortgagor) recited therein and the names of persons requesting
2 copies.

3 (b) The mortgagee, trustee, or other person authorized to record
4 the notice of default or the notice of sale shall do each of the
5 following:

6 (1) (A) Within 10 business days following recordation of the
7 notice of default, deposit or cause to be deposited in the United
8 States mail an envelope, sent by registered or certified mail with
9 postage prepaid, containing a copy of the notice with the recording
10 date shown thereon, addressed to each person whose name and
11 address are set forth in a duly recorded request therefor, directed
12 to the address designated in the request and to each trustor or
13 mortgagor at his or her last known address if different than the
14 address specified in the deed of trust or mortgage with power of
15 sale.

16 (B) *Together with the copy of the notice of default, send to each*
17 *trustor or mortgagor at his or her last known address if different*
18 *than the address specified in the deed of trust or mortgage with*
19 *power of sale, a life of loan accounting for the mortgage at issue.*
20 *A life of loan accounting shall include each of the following:*

21 (i) *An accounting of all payments made on the mortgage or deed*
22 *of trust loan account from the close of escrow to the date the notice*
23 *of default was recorded in the form of a spreadsheet showing all*
24 *account activity, including running balances for each account,*
25 *including balances for principal, interest, escrow, unapplied funds,*
26 *and fees.*

27 (ii) *An itemization and description of all late fees, late charges,*
28 *appraisal fees, property inspection fees, forced placed insurance*
29 *charges, legal fees, and recoverable corporate advances charged*
30 *on the mortgage or deed of trust loan account and an explanation*
31 *as to why those fees were charged.*

32 (iii) *A copy of all interest rate adjustment notices and the two*
33 *most recent escrow analysis notices sent to the borrower.*

34 (iv) *A breakdown of the current escrow charges showing how*
35 *they are calculated and the reasons for any increase within the*
36 *last 24 months and a breakdown of any shortage, deficiency, or*
37 *surplus in the escrow account over the past three years.*

38 (2) At least 20 days before the date of sale, deposit or cause to
39 be deposited in the United States mail an envelope, sent by
40 registered or certified mail with postage prepaid, containing a copy

1 of the notice of the time and place of sale, addressed to each person
2 whose name and address are set forth in a duly recorded request
3 therefor, directed to the address designated in the request and to
4 each trustor or mortgagor at his or her last known address if
5 different than the address specified in the deed of trust or mortgage
6 with power of sale.

7 (3) As used in paragraphs (1) and (2), the "last known address"
8 of each trustor or mortgagor means the last business or residence
9 physical address actually known by the mortgagee, beneficiary,
10 trustee, or other person authorized to record the notice of default.
11 For the purposes of this subdivision, an address is "actually known"
12 if it is contained in the original deed of trust or mortgage, or in
13 any subsequent written notification of a change of physical address
14 from the trustor or mortgagor pursuant to the deed of trust or
15 mortgage. For the purposes of this subdivision, "physical address"
16 does not include an e-mail or any form of electronic address for a
17 trustor or mortgagor. The beneficiary shall inform the trustee of
18 the trustor's last address actually known by the beneficiary.
19 However, the trustee shall incur no liability for failing to send any
20 notice to the last address unless the trustee has actual knowledge
21 of it.

22 (4) A "person authorized to record the notice of default or the
23 notice of sale" shall include an agent for the mortgagee or
24 beneficiary, an agent of the named trustee, any person designated
25 in an executed substitution of trustee, or an agent of that substituted
26 trustee.

27 (c) The mortgagee, trustee, or other person authorized to record
28 the notice of default or the notice of sale shall do the following:

29 (1) Within one month following recordation of the notice of
30 default, deposit or cause to be deposited in the United States mail
31 an envelope, sent by registered or certified mail with postage
32 prepaid, containing a copy of the notice with the recording date
33 shown thereon, addressed to each person set forth in paragraph
34 (2), provided that the estate or interest of any person entitled to
35 receive notice under this subdivision is acquired by an instrument
36 sufficient to impart constructive notice of the estate or interest in
37 the land or portion thereof that is subject to the deed of trust or
38 mortgage being foreclosed, and provided the instrument is recorded
39 in the office of the county recorder so as to impart that constructive
40 notice prior to the recording date of the notice of default and

1 provided the instrument as so recorded sets forth a mailing address
2 that the county recorder shall use, as instructed within the
3 instrument, for the return of the instrument after recording, and
4 which address shall be the address used for the purposes of mailing
5 notices herein.

6 (2) The persons to whom notice shall be mailed under this
7 subdivision are:

8 (A) The successor in interest, as of the recording date of the
9 notice of default, of the estate or interest or any portion thereof of
10 the trustor or mortgagor of the deed of trust or mortgage being
11 foreclosed.

12 (B) The beneficiary or mortgagee of any deed of trust or
13 mortgage recorded subsequent to the deed of trust or mortgage
14 being foreclosed, or recorded prior to or concurrently with the
15 deed of trust or mortgage being foreclosed but subject to a recorded
16 agreement or a recorded statement of subordination to the deed of
17 trust or mortgage being foreclosed.

18 (C) The assignee of any interest of the beneficiary or mortgagee
19 described in subparagraph (B), as of the recording date of the notice
20 of default.

21 (D) The vendee of any contract of sale, or the lessee of any
22 lease, of the estate or interest being foreclosed that is recorded
23 subsequent to the deed of trust or mortgage being foreclosed, or
24 recorded prior to or concurrently with the deed of trust or mortgage
25 being foreclosed but subject to a recorded agreement or statement
26 of subordination to the deed of trust or mortgage being foreclosed.

27 (E) The successor in interest to the vendee or lessee described
28 in subparagraph (D), as of the recording date of the notice of
29 default.

30 (F) The office of the Controller, Sacramento, California, where,
31 as of the recording date of the notice of default, a "Notice of Lien
32 for Postponed Property Taxes" has been recorded against the real
33 property to which the notice of default applies.

34 (3) At least 20 days before the date of sale, deposit or cause to
35 be deposited in the United States mail an envelope, sent by
36 registered or certified mail with postage prepaid, containing a copy
37 of the notice of the time and place of sale addressed to each person
38 to whom a copy of the notice of default is to be mailed as provided
39 in paragraphs (1) and (2), and addressed to the office of any state
40 taxing agency, Sacramento, California, that has recorded,

1 subsequent to the deed of trust or mortgage being foreclosed, a
2 notice of tax lien prior to the recording date of the notice of default
3 against the real property to which the notice of default applies.

4 (4) Provide a copy of the notice of sale to the Internal Revenue
5 Service, in accordance with Section 7425 of the Internal Revenue
6 Code and any applicable federal regulation, if a "Notice of Federal
7 Tax Lien under Internal Revenue Laws" has been recorded,
8 subsequent to the deed of trust or mortgage being foreclosed,
9 against the real property to which the notice of sale applies. The
10 failure to provide the Internal Revenue Service with a copy of the
11 notice of sale pursuant to this paragraph shall be sufficient cause
12 to rescind the trustee's sale and invalidate the trustee's deed, at
13 the option of either the successful bidder at the trustee's sale or
14 the trustee, and in either case with the consent of the beneficiary.
15 Any option to rescind the trustee's sale pursuant to this paragraph
16 shall be exercised prior to any transfer of the property by the
17 successful bidder to a bona fide purchaser for value. A rescision of
18 the trustee's sale pursuant to this paragraph may be recorded in a
19 notice of rescision pursuant to Section 1058.5.

20 (5) The mailing of notices in the manner set forth in paragraph
21 (1) shall not impose upon any licensed attorney, agent, or employee
22 of any person entitled to receive notices as herein set forth any
23 duty to communicate the notice to the entitled person from the fact
24 that the mailing address used by the county recorder is the address
25 of the attorney, agent, or employee.

26 (d) Any deed of trust or mortgage with power of sale hereafter
27 executed upon real property or an estate for years therein may
28 contain a request that a copy of any notice of default and a copy
29 of any notice of sale thereunder shall be mailed to any person or
30 party thereto at the address of the person given therein, and a copy
31 of any notice of default and of any notice of sale shall be mailed
32 to each of these at the same time and in the same manner required
33 as though a separate request therefor had been filed by each of
34 these persons as herein authorized. If any deed of trust or mortgage
35 with power of sale executed after September 19, 1939, except a
36 deed of trust or mortgage of any of the classes excepted from the
37 provisions of Section 2924, does not contain a mailing address of
38 the trustor or mortgagor therein named, and if no request for special
39 notice by the trustor or mortgagor in substantially the form set
40 forth in this section has subsequently been recorded, a copy of the

1 notice of default shall be published once a week for at least four
2 weeks in a newspaper of general circulation in the county in which
3 the property is situated, the publication to commence within 10
4 business days after the filing of the notice of default. In lieu of
5 publication, a copy of the notice of default may be delivered
6 personally to the trustor or mortgagor within the 10 business days
7 or at any time before publication is completed, or by posting the
8 notice of default in a conspicuous place on the property and mailing
9 the notice to the last known address of the trustor or mortgagor.

10 (e) Any person required to mail a copy of a notice of default or
11 notice of sale to each trustor or mortgagor pursuant to subdivision
12 (b) or (c) by registered or certified mail shall simultaneously cause
13 to be deposited in the United States mail, with postage prepaid and
14 mailed by first-class mail, an envelope containing an additional
15 copy of the required notice addressed to each trustor or mortgagor
16 at the same address to which the notice is sent by registered or
17 certified mail pursuant to subdivision (b) or (c). The person shall
18 execute and retain an affidavit identifying the notice mailed,
19 showing the name and residence or business address of that person,
20 that he or she is over the age of 18 years, the date of deposit in the
21 mail, the name and address of the trustor or mortgagor to whom
22 sent, and that the envelope was sealed and deposited in the mail
23 with postage fully prepaid. In the absence of fraud, the affidavit
24 required by this subdivision shall establish a conclusive
25 presumption of mailing.

26 (f) (1) Notwithstanding subdivision (a), with respect to separate
27 interests governed by an association, as defined in subdivision (a)
28 of Section 1351, the association may cause to be filed in the office
29 of the recorder in the county in which the separate interests are
30 situated a request that a mortgagee, trustee, or other person
31 authorized to record a notice of default regarding any of those
32 separate interests mail to the association a copy of any trustee's
33 deed upon sale concerning a separate interest. The request shall
34 include a legal description or the assessor's parcel number of all
35 the separate interests. A request recorded pursuant to this
36 subdivision shall include the name and address of the association
37 and a statement that it is a homeowners' association. Subsequent
38 requests of an association shall supersede prior requests. A request
39 pursuant to this subdivision shall be recorded before the filing of
40 a notice of default. The mortgagee, trustee, or other authorized

1 person shall mail the requested information to the association
2 within 15 business days following the date the trustee's deed is
3 recorded. Failure to mail the request, pursuant to this subdivision,
4 shall not affect the title to real property.

5 (2) A request filed pursuant to paragraph (1) does not, for
6 purposes of Section 27288.1 of the Government Code, constitute
7 a document that either effects or evidences a transfer or
8 encumbrance of an interest in real property or that releases or
9 terminates any interest, right, or encumbrance of an interest in real
10 property.

11 (g) No request for a copy of any notice filed for record pursuant
12 to this section, no statement or allegation in the request, and no
13 record thereof shall affect the title to real property or be deemed
14 notice to any person that any person requesting copies of notice
15 has or claims any right, title, or interest in, or lien or charge upon
16 the property described in the deed of trust or mortgage referred to
17 therein.

18 (h) "Business day," as used in this section, has the meaning
19 specified in Section 9.

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