

CITY OF OAKLAND
BILL ANALYSIS



Date: May 4 2010
Bill Number: 1275
Bill Author: Senator Mark Leno and Darrell Steinberg

DEPARTMENT INFORMATION

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RECOMMENDED POSITION: SUPPORT

Summary of the Bill

The bill requires a loan servicer to provide an application for a loan modification to a homeowner, and determine eligibility for a modification or other alternative to foreclosure for those who complete the application, prior to filing of a Notice of Default.

This bill, which was approved by the Banking, Finance and Insurance Committee on April 7, 2010 by a vote of 7-2, would require a mortgagee, trustee, beneficiary, or authorized agent – before recording a Notice of Default (NOD) on a loan covered by the bill – to comply with the bill's provisions, as specified, which require: (1) written communication and statutory notice; (2) contact and borrower outreach; (3) a declaration of compliance; and (4) a denial explanation letter. This bill would sunset on January 1, 2013.

This bill has specific language, timelines and performance requirements for communication with mortgage holders that lenders would have to comply with before issuing a notice of default. Among them would include notifying borrowers of loan modification programs available and the documents and other information the borrower would be required for the loan modification; providing a toll-free telephone number with access to a live representative during business hours for borrowers who wish to discuss options for avoiding foreclosure; and the Internet Web site, if any, of the mortgagee, trustee, beneficiary, or authorized agent where a borrower may obtain, among other things, information on foreclosure avoidance options and a list of documents needed to pursue those options.

This bill provides for a statutory notice that would: (1) inform borrowers of their foreclosure-related rights (including the right to have a loan modification application reviewed before an NOD may be filed and the right to an explanatory denial letter if the borrower's application is denied); (2) refer to the written communication described above; (3) explain the foreclosure process; and (4) advise borrowers that it is illegal for any person to charge the borrower for help

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with foreclosure avoidance efforts, including a loan modification before providing the promised services. And would require that the above-described notice be made available by an unspecified state entity in English and each of the five foreign languages described in Civil Code Section 1632 (Spanish, Tagalog, Korean, Vietnamese, and Chinese). The notice must be made available on or before January 1, 2011.

This bill would require that for all first lien mortgage loans covered by the bill an NOD may not be filed until reasonable borrower solicitation efforts have failed or a borrower who applies for a loan modification has been evaluated and determined to be ineligible. And defines means of contact. The first contact with the borrower must be the written communication and statutory notice described above. After these have been sent, there must be an attempt to contact the borrower in person or by telephone, pursuant to SB 1137, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure; and the in-person or telephone contact must be clearly identified as an attempt to initiate discussion with the borrower about foreclosure avoidance options and may not include a demand for immediate payment of any past-due amounts.

Under this bill Mortgagee, beneficiary, or authorized agent, concurrently with filing an NOD, to record a declaration of compliance and mail the borrower a notice stating that the contact requirements have been met. That notice must be sent by certified mail and must include the dates and times of the contact, or attempted contact, as well as the phone numbers and addresses used for that contact.

This bill would revise the application of SB 1137 to apply to mortgages and deeds of trust recorded prior to January 1, 2009.

Positive Factors for Oakland

This will help avoid unnecessary foreclosures of residential properties when a loan modification or other alternative is a viable and economically desirable option for both the borrower and the holder of the loan.

Negative Factors for Oakland

None noted

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

Critical (top priority for City lobbyist, city position required ASAP)

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- Very Important** (priority for City lobbyist, city position necessary)
 Somewhat Important (City position desirable if time and resources are available)
 Minimal or **None** (do not review with City Council, position not required)

Known support:

Affordable Housing Services; California Alliance for Retired Americans; California Capital Financial Development Corporation; California Coalition for Rural Housing; California Conference Board of the Amalgamated Transit Union; California Conference of Machinists; California Human Development Corporation; California Labor Federation, AFL-CIO; California Reinvestment Coalition; California Rural Legal Assistance Foundation; Causa Justa: Just Cause; Center for Responsible Lending; City of Lakewood California; Community Financial Resources; Community Housing Works, San Diego; Consumer Federation of California; Consumers Union; Consumer Legal Services in East Palo Alto; Contra Costa Interfaith Supporting Community Organization; Council on Aging Silicon Valley; East LA Community Corporation; East Palo Alto Council of Tenants Education Fund; Engineers and Scientists of California, IFPTE Local 20; Housing and Economics Rights Advocates; Inland Fair Housing and Mediation Board; International Longshore and Warehouse Union; JOLT, Coalition for Responsible Investing; Law Foundation of Silicon Valley; Neighborhood Housing Services of Orange County; Novadebt; Oakland Community Organizations; Opportunity Fund; Orange County Fair Housing Council, Inc.; Professional and Technical Engineers, IFPTE Local 21; Public Counsel; Rural Community Assistance Corporation; Sacramento Gray Panthers; Sacramento Housing Alliance; Sacramento Mutual Housing Association; Southern California Housing Rights Center; The Mission Economic Development Agency; UNITE-HERE; United Food & Commercial Workers Western States Council; Vallejo Neighborhood Housing Services, Inc.; Vermont Slauson Economic Development Corp.; Yolo Mutual Housing Association; Western Center on Law and Poverty; one individual

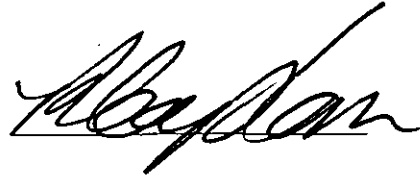
Known Opposition:

American Council of Engineering Companies of California; California Bankers Association; California Building Industry Association; California Chamber of Commerce; California Credit Union League; California Financial Services Association; California Independent Bankers; California Land Title Association; California Mortgage Association; California Mortgage Bankers Association; Civil Justice Association of California; Securities Industry and Financial Markets Association; United Trustees Association

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Attach bill text and state/federal legislative committee analysis, if available.

Respectfully Submitted,



Rebecca Kaplan
Council Member At Large

Approved for Forwarding to
Rules Committee

Office of City Administrator

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Approved as to Form and Legality

DRAFT
City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

Introduced by Councilmember Rebecca Kaplan

RESOLUTION SUPPORTING SENATE BILL 1275, REQUIRING A LOAN SERVICER TO PROVIDE AN APPLICATION FOR A LOAN MODIFICATION TO A HOMEOWNER, AND DETERMINE ELIGIBILITY FOR A MODIFICATION OR OTHER ALTERNATIVE TO FORECLOSURE FOR THOSE WHO COMPLETE THE APPLICATION, PRIOR TO FILING OF A NOTICE OF DEFAULT.

WHEREAS, the City of Oakland has experienced a very high rate of home mortgage foreclosures, particularly for subprime and non-traditional loans; and

WHEREAS, *delinquent borrowers are often not contacted by lenders or their agents prior to the filing of a notice of default*; and

WHEREAS, lenders, trustees, beneficiaries and other entities often do not contact borrowers in an effort to resolve defaults; and

WHEREAS, many borrowers are unaware of their foreclosure related rights including the right to have a loan modification application reviewed before an Notice of Default may be filed and the right to an explanatory denial letter if the application is denied; and,

WHEREAS, it is often difficult for borrowers to reach a live representative of the lender or obtain information regarding options to avoid foreclosure and specific instructions on steps to take to explore these options; Therefore be it

RESOLVED: The City of Oakland urges support for SB1275 (Lenno), would require a mortgagee, trustee, beneficiary, or authorized agent provide: (1) written communication and statutory notice; (2) contact and borrower outreach; (3) a declaration of compliance; and (4) a denial explanation letter, to a mortgage holder before recording a Notice of Default (NOD) on a loan covered by the bill, and that these notices be made available by an unspecified state entity in English and each of the five foreign languages described in Civil Code Section 1632 (Spanish, Tagalog, Korean, Vietnamese, and Chinese). The notice must be made available on or before January 1, 2011.

BE IT FURTHER RESOLVED that our elected representatives in Sacramento be notified of the benefits of this bill to the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduced by Senators Leno and SteinbergFebruary 19, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1275, as introduced, Leno. Mortgages: foreclosures.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, 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. Existing law provides that, after not less than 3 months after the filing of the notice of default, the parties described above may give notice of sale, stating the time and place of the sale, as specified.

Existing law requires, until January 1, 2013, a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower, as defined, prior to filing a notice of default, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. Existing law requires the notice of default to include a specified declaration from the mortgagee, beneficiary, or authorized agent regarding its contact with the borrower.

This bill would, until January 1, 2013, require a mortgagee, trustee, beneficiary, or authorized agent, prior to the filing of a notice of default, to provide the borrower with an application for a loan modification and other foreclosure avoidance options and a specified notice regarding the borrower's rights during the foreclosure process, subject to specified

exceptions. The bill would require an unspecified state entity to make that notice available in English and specified languages.

This bill would prohibit the mortgagee, beneficiary, or authorized agent from combining collections activity with communication with the borrower about foreclosure avoidance options. The bill would delete the requirement that the notice of default contain a specified declaration, and would instead require the mortgagee, beneficiary, or authorized agent to, concurrently with the filing of a notice of default, record a declaration of compliance that attests to specified facts, and mail the borrower a notice stating that these requirements have been met. The bill would provide that failure to record a declaration of compliance, or recordation of a declaration of compliance that fails to meet the specified requirements, would constitute grounds for the borrower to bring an action to void the foreclosure, or to recover either treble damages or statutory damages in the amount of \$10,000, whichever is greater, from the mortgagee, trustee, beneficiary, or authorized agent, if specified conditions exist.

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) A mortgagee, trustee, beneficiary, or authorized
4 agent shall provide a borrower with a copy of the notice described
5 in subdivision (b) and an application for a loan modification and
6 other foreclosure avoidance options prior to filing a notice of
7 default pursuant to Section 2924.

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

11
12 “Important Notice Regarding Your Rights And Foreclosure
13 Avoidance Options: California law requires that you receive this
14 notice of your legal rights before the foreclosure process begins.
15 ARE YOU HAVING TROUBLE PAYING YOUR
16 MORTGAGE?

17 If you are having trouble paying your mortgage, you should
18 contact your loan servicer as soon as possible to discuss options

1 for avoiding foreclosure. Your loan servicer is the company listed
2 on your mortgage bills as the party to which your mortgage
3 payment should be sent. You are also entitled to receive a telephone
4 call and a letter from your loan servicer inviting you to discuss
5 foreclosure avoidance options.

6 **POTENTIAL FORECLOSURE AVOIDANCE OPTIONS**

7 One potential option for avoiding foreclosure is a loan
8 modification. Your loan servicer may be participating in the federal
9 loan modification program called the Home Affordable
10 Modification Program, which has specific requirements and
11 guidelines. To see if your servicer is participating, or to find out
12 more about this program, visit
13 http://www.makinghomeaffordable.gov/contact_servicer.html.
14 Your servicer may also offer other loan modification programs.
15 You may also qualify for other options for avoiding foreclosure,
16 including loan refinancing, forbearance, short sale, or a deed in
17 lieu of foreclosure.

18 With this notice, you should have received an application from
19 your servicer for a loan modification and other foreclosure relief.
20 If you request that your loan servicer consider you for a loan
21 modification or other alternative to foreclosure, your servicer is
22 required to inform you of its decision before filing a document
23 called a Notice of Default, which is the first step in the foreclosure
24 process. If your servicer denies your application, it must send you
25 a detailed letter describing the reasons for the denial.

26 **THE FORECLOSURE PROCESS**

27 If your servicer has complied with these requirements, but has
28 denied your application and complied with the contact requirements
29 described in Section 2923.5 of the Civil Code, it may proceed with
30 the foreclosure process.

31 **Notice of Default:** Your loan servicer may not foreclose on your
32 home without filing official documents with the county recorder.
33 You are entitled to receive copies of those documents. The first
34 step in the foreclosure process is the filing of a notice of default.
35 If your loan servicer records a notice of default on your loan, it
36 must mail you a copy of that notice and must wait at least 90 days
37 before taking further steps to sell your home.

38 **Notice of Sale:** Once 90 days have passed from the filing of the
39 notice of default, your servicer may file a notice of sale. Your
40 servicer must post that notice of sale on your property, mail you

1 a copy of that notice, and wait at least 20 days before selling your
2 home. Your notice of sale will include the contact information of
3 the person or company to call if you want more information about
4 your sale date.

5 Please seek legal help if you believe that you have been denied
6 your legal foreclosure rights. It is illegal for any person, including
7 a lawyer, to charge you for helping you with a loan modification
8 or other effort to avoid foreclosure before providing the services
9 promised.”

10

11 (c) This section shall not apply if any of the following occurs:

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

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

21 (3) A case has been filed by the borrower under Chapter 7, 11,
22 12, or 13 of Title 11 of the United States Code, and the bankruptcy
23 court has not entered an order closing or dismissing the bankruptcy
24 case or granting relief from a stay of foreclosure.

25 (d) This section shall apply only to mortgages or deeds of trust
26 recorded prior to December 31, 2009, that are secured by
27 owner-occupied residential real property containing no more than
28 four dwelling units. For purposes of this subdivision,
29 “owner-occupied” means that the residence is the principal
30 residence of the borrower as indicated to the lender in loan
31 documents.

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

35 SEC. 2. Section 2923.5 of the Civil Code, as amended by
36 Section 1 of Chapter 43 of the Statutes of 2009, is amended to
37 read:

38 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
39 agent may not file a notice of default pursuant to Section 2924
40 until 30 days after initial contact is made as required by paragraph

1 (2) or 30 days after satisfying the due diligence requirements as
2 described in subdivision (g).

3 (2) A mortgagee, beneficiary, or authorized agent shall contact
4 the borrower in person or by telephone in order to assess the
5 borrower's financial situation and explore options for the borrower
6 to avoid foreclosure. *This communication and attempted*
7 *communication shall be clearly identified as attempts to initiate*
8 *discussion with the borrower about foreclosure avoidance options,*
9 *and may not be combined with collections activity.* During the
10 initial contact, the mortgagee, beneficiary, or authorized agent
11 shall advise the borrower that he or she has the right to request a
12 subsequent meeting and, if requested, the mortgagee, beneficiary,
13 or authorized agent shall schedule the meeting to occur within 14
14 days. The assessment of the borrower's financial situation and
15 discussion of options may occur during the first contact, or at the
16 subsequent meeting scheduled for that purpose. In either case, the
17 borrower shall be provided the toll-free telephone number made
18 available by the United States Department of Housing and Urban
19 Development (HUD) to find a HUD-certified housing counseling
20 agency. Any meeting may occur telephonically.

21 ~~(b) A notice of default filed pursuant to Section 2924 shall~~
22 ~~include a declaration that the mortgagee, beneficiary, or authorized~~
23 ~~agent has contacted the borrower, has tried with due diligence to~~
24 ~~contact the borrower as required by this section, or that no contact~~
25 ~~was required pursuant to subdivision (h).~~

26 *(b) The mortgagee, beneficiary, or authorized agent,*
27 *concurrently with the filing of a notice of default, shall do both of*
28 *the following:*

29 *(1) Record a declaration of compliance pursuant to Section*
30 *2923.7.*

31 *(2) Mail the borrower a notice stating that the requirements of*
32 *this section have been met. That notice shall be sent by certified*
33 *mail and shall include the dates and times of, and addresses and*
34 *telephone numbers used for, the contact or attempted contact*
35 *required by paragraph (2) of subdivision (a) and subdivision (g).*

36 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
37 already filed the notice of default prior to the enactment of this
38 section and did not subsequently file a notice of rescission, then
39 the mortgagee, trustee, beneficiary, or authorized agent shall, as

1 part of the notice of sale filed pursuant to Section 2924f, include
2 a declaration that either:

3 (1) States that the borrower was contacted to assess the
4 borrower's financial situation and to explore options for the
5 borrower to avoid foreclosure.

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

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

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

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

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

30 (1) A mortgagee, beneficiary, or authorized agent shall first
31 attempt to contact a borrower by sending a first-class letter that
32 includes the toll-free telephone number made available by HUD
33 to find a HUD-certified housing counseling agency.

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

39 (B) A mortgagee, beneficiary, or authorized agent may attempt
40 to contact a borrower using an automated system to dial borrowers,

1 provided that, if the telephone call is answered, the call is
2 connected to a live representative of the mortgagee, beneficiary,
3 or authorized agent.

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

9 (3) If the borrower does not respond within two weeks after the
10 telephone call requirements of paragraph (2) have been satisfied,
11 the mortgagee, beneficiary, or authorized agent shall then send a
12 certified letter, with return receipt requested.

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

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

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

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

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

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

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

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

38 (2) The borrower has contracted with an organization, person,
39 or entity whose primary business is advising people who have
40 decided to leave their homes on how to extend the foreclosure

1 process and avoid their contractual obligations to mortgagees or
2 beneficiaries.

3 (3) A case has been filed by the borrower under Chapter 7, 11,
4 12, or 13 of Title 11 of the United States Code and the bankruptcy
5 court has not entered an order closing or dismissing the bankruptcy
6 case, or granting relief from a stay of foreclosure.

7 (i) This section shall apply only to mortgages or deeds of trust
8 recorded ~~from January 1, 2003, to December 31, 2007, inclusive~~
9 *prior to December 31, 2009*, that are secured by owner-occupied
10 residential real property containing no more than four dwelling
11 units. For purposes of this subdivision, "owner-occupied" means
12 that the residence is the principal residence of the borrower as
13 indicated to the lender in loan documents.

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

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

18 2923.7. (a) A declaration of compliance shall be attached to
19 every notice of default filed pursuant to Section 2924. That
20 declaration shall be signed by an individual having personal
21 knowledge of the facts stated within and be substantially similar
22 to the following form:

23
24 DECLARATION OF COMPLIANCE
25 BORROWER CONTACT

26 This loan is not subject to Cal. Civil Code § 2923.5, pursuant
27 to the following provisions (check all that apply):

28
29 Cal. Civil Code § 2923.5(h).

30
31 Cal. Civil Code § 2923.5(i).

32
33 This loan is subject to Cal. Civil Code § 2923.5, and the
34 mortgagee, beneficiary, or authorized agent has complied with the
35 requirements of Cal. Civil Code § 2923.5 by doing the following
36 (check one):

37
38 Making contact with the borrower pursuant to Cal. Civil Code § 2923.5(a)(2)
39 and sending the letter required by Cal. Civil Code § 2923.5(b).

40

1 Satisfying the due diligence requirements described in Cal. Civil Code
2 § 2923.5(g) and sending the letter required by Cal. Civil Code § 2923.5(b).

3
4 FORECLOSURE AVOIDANCE REVIEW

5 This loan is not subject to Cal. Civil Code § 2923.73.

6 This loan is subject to Cal. Civil Code § 2923.73 and (check
7 one):

8
9 The borrower did not submit a written request to modify the loan that is the
10 subject of the accompanying notice of default or otherwise apply for a loan
11 modification according to the mortgagee, beneficiary, or authorized agent's
12 applicable procedures.

13
14 The borrower submitted a written request to modify the loan that is the
15 subject of the accompanying notice of default or otherwise applied for a loan
16 modification according to the mortgagee, beneficiary, or authorized agent's
17 applicable procedures, the request was denied, and the mortgagee, beneficiary,
18 or authorized agent sent the borrower a denial explanation letter in compliance
19 with the requirements of Cal. Civil Code § 2923.73(a).

20
21 The borrower's request to modify the loan that is the subject of the
22 accompanying notice of default was approved, but the borrower did not accept
23 the modification offered or did not comply with the terms of the modification.

24
25
26 (b) This section shall remain in effect only until January 1, 2013,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2013, deletes or extends that date.

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

30 2923.73. (a) If a borrower submits a written request for a loan
31 modification and that request is denied, the declaration of
32 compliance shall attest to the fact that the mortgagee, trustee, or
33 other person authorized to take sale sent the borrower a denial
34 explanation letter by certified mail, at least 15 days prior to
35 recording the declaration of compliance, which included all of the
36 following:

37 (1) The date a completed application for a loan modification
38 was received from the borrower.

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

1 (3) The final decision made by the mortgagee or beneficiary,
2 which shall indicate what alternatives to foreclosure were
3 considered, such as forbearance, short sale, deed in lieu of
4 foreclosure, or modification, and the decision made on each option.

5 (4) If the borrower was considered for a federal Home
6 Affordable Modification, the information required to be provided
7 in the borrower notice described in the federal Home Affordable
8 Modification Guidelines Supplemental Directive 09-08, issued
9 November 3, 2009.

10 (5) If the borrower was considered for another type of
11 modification or for an option other than a modification, information
12 detailing the reasons the borrower did not qualify for each of those
13 alternatives, including quantitative data supporting the decision.
14 This documentation may include a finding that the borrower was
15 previously offered a loan modification and failed to successfully
16 make payments *under the terms of the modified loan*.

17 (6) The name and contact information of the holder of the note.

18 (7) Instructions regarding how to dispute the written decisions
19 described in the denial explanation letter.

20 (b) This section shall not apply if any of the following occurs:

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

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

30 (3) A case has been filed by the borrower under Chapter 7, 11,
31 12, or 13 of Title 11 of the United States Code, and the bankruptcy
32 court has not entered an order closing or dismissing the bankruptcy
33 case or granting relief from a stay of foreclosure.

34 (c) This section shall apply only to mortgages or deeds of trust
35 recorded prior to December 31, 2009, that are secured by
36 owner-occupied residential real property containing no more than
37 four dwelling units. For purposes of this subdivision,
38 "owner-occupied" means that the residence is the principal
39 residence of the borrower as indicated to the lender in loan
40 documents.

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

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

5 2923.75. (a) Failure to record a declaration of compliance in
6 accordance with Section 2923.7, or recordation of a declaration
7 of compliance that does not comply with the requirements of
8 Sections 2923.7 and 2923.73, shall constitute grounds for a
9 borrower to pursue either of the following options:

10 (1) If the property that is the subject of the declaration of
11 compliance is sold to a bona fide purchaser at a trustee sale
12 conducted in accordance with Section 2924f, the borrower may
13 recover the greater of treble damages or statutory damages in the
14 amount of ten thousand dollars (\$10,000) from the mortgagee,
15 trustee, beneficiary, or authorized agent that failed to comply with
16 Section 2923.7 or 2923.73.

17 (2) If the property that is the subject of the declaration of
18 compliance is sold to the foreclosing party at a trustee sale
19 conducted in accordance with Section 2924f, the borrower may
20 bring an action to void the foreclosure sale.

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

24 SEC. 6. The provisions of this act are severable. If any
25 provision of this act or its application is held invalid, that invalidity
26 shall not affect other provisions or applications that can be given
27 effect without the invalid provision or application.