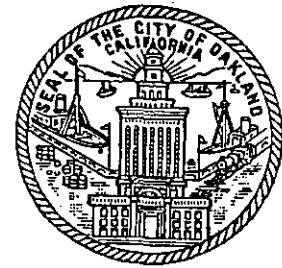


# CITY OF OAKLAND

## BILL ANALYSIS



**Date:** April 28<sup>th</sup>, 2011  
**Bill Number:** SB 729 Good Faith Modifications before Foreclosures  
**Bill Author:** Senator Mark Leno and Darrell Steinberg

### DEPARTMENT INFORMATION

**Contact:** Ada Chan  
**Department:** Council Member Rebecca Kaplan  
**Telephone:** (510) 757-5646  
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**RECOMMENDED POSITION: STRONG SUPPORT**

### Summary of the Bill

California Senate Bill 729 would require that lenders evaluate a timely loan modification request and provide the homeowner with a clear denial before beginning the foreclosure process with the Notice of Default. This is intended to stop the lender from double tracking the loan modification process with the foreclosure process, which has been said to sometimes result in a premature foreclosure on an otherwise qualified loan modification candidate. Under SB 729, lenders must attach a detailed Notice of Compliance, defined in bill as introduced, to the Notice of Default that attests to ownership of the note.

If the lender fails to comply with SB 729, the trustee sale can be stopped by the homeowner. If it's too late because the property was already sold to a bona fide purchaser at trustee sale or as REO, then the lender can be held liable for triple the homeowner's actual damages or \$15,000, whichever is greater, as well as attorneys fees and costs. SB 729 will help homeowners in default who might have their loan modification cut short by a premature foreclosure sale, and will also help many other defaulting homeowners by delaying the foreclosure start, allowing them to stay in their home longer.

### Positive Factors for Oakland

The City of Oakland has long been a leader fighting against predatory lending practices and ensuring our residents are provided every tool possible to prevent foreclosures. Like many urban cities, Oakland has been negatively impacted by the increase in foreclosures which wreak havoc on our residents, working families and the community. SB 729 will act to keep our residents in their homes, and mitigate the effects foreclosure has had in our communities.

This bill requires loan medications be provided as an option in the case of otherwise preventable foreclosures, and that servicers to give struggling borrowers who apply for a loan modification a "yes" or "no" answer before starting the formal foreclosure process. This modest but important

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requirement will prevent avoidable 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**)
- 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:**

Alliance of Californians for Community Empowerment (ACCE)  
California Reinvestment Coalition (CRC)  
People Improving Communities through Organizing (PICO) California  
Service Employees international Union (SEIU)

**Known Opposition:**

There is no known opposition at this time.

**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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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

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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 (h) 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 minimis.

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 2924c, the~~  
37 ~~statement specified in paragraph (1) of subdivision (b) of Section~~  
38 ~~2924c.~~

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 acmally-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.



**DRAFT**

City Attorney

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2011 APR 14 PM 4:48

**OAKLAND CITY COUNCIL****RESOLUTION NO. \_\_\_\_\_ C.M.S.****Introduced by Councilmember Rebecca Kaplan**

**Resolution In Support of Senate Bill 729 (Leno and Steinberg) 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, defined in bill, to evaluate the borrower for all available loss mitigation options to avoid foreclosure.**

**WHEREAS**, the foreclosure crises continues in California :

- One in five U.S. foreclosures is in California.<sup>i</sup>
- California is the hardest hit of all states with the highest number of foreclosures- 700,000 homes in some stage of foreclosure.<sup>ii</sup>
- There have been 1.2 million foreclosures since 2008 in California and that number is expected to climb to 2 million through 2012.<sup>iii</sup>
- Foreclosures in 2011 are expected to exceed 2010 levels.<sup>iv</sup>
- More than a third of California homeowners with a mortgage already owe more on their mortgages than their homes are worth.<sup>v</sup>

**WHEREAS**, the costs of the foreclosure crisis in California include (2008-2012):

- Homeowner losses to foreclosed and neighboring homes estimated at \$600 billion to as much as \$1 trillion,
- Property tax revenue losses estimated at \$4 billion, and
- Local government losses for multiple agencies and multiple levels of government to respond to absorb the increased foreclosure-related costs including maintenance of blighted properties, sheriff evictions, inspections, public safety, trash removal, and other costs estimated at \$17 billion—\$19,229 cost for every foreclosure.

**WHEREAS**, foreclosures in our community have had a fiscal impact on education, public services, infrastructure and essential safety-net services in our neighborhoods.

**WHEREAS**, banks continue to use flawed, and in some cases fraudulent, procedures which create foreclosures in our community. The revelations of widespread foreclosure mismanagement by mortgage servicers who failed to properly document the seizure and sale of homes has prompted investigation of foreclosure practices. In some cases, the banks who took those homes can't even prove that they had the authority to do so.

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
City Attorney

**WHEREAS**, unless we address the California foreclosure crisis, the damage to communities and the local economy will be staggering and long-lasting.

**RESOLVED:** The City of Oakland urges support for Senate Bill 729 (Leno and Steinberg),

**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

\_\_\_\_\_

<sup>i</sup> RealtyTrac.com.

<sup>ii</sup> RealtyTrac.com 2010 year end foreclosure filings and Center for Responsible Lending.