

Proposed Conference Report No. 1  
June 27, 2012

AMENDED IN SENATE SEPTEMBER 1, 2011

AMENDED IN SENATE JUNE 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

No. 278

**Introduced by Assembly ~~Member Hill~~ Members Eng, Feuer,  
Mitchell, and John A. Pérez**

**(Principal ~~coauthor: Senator Calderon~~ coauthors: Assembly  
Members Davis, Carter, and Skinner)**

*(Principal coauthors: Senators Leno, Evans, Calderon, Corbett,  
DeSaulnier, Hancock, Pavley, and Steinberg)*

February 8, 2011

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An act to ~~add Section 10080.9 to the Business and Professions Code,~~  
~~relating to real estate~~ *amend and add Sections 2923.5 and 2923.6 of,*  
*to amend and repeal Section 2924 of, to add Sections 2920.5, 2923.4,*  
*2923.7, 2924.17, and 2924.20 to, to add and repeal Sections 2923.55,*  
*2924.9, 2924.10, 2924.18, and 2924.19 of, and to add, repeal, and add*  
*Sections 2924.11, 2924.12, and 2924.15 of, the Civil Code, relating to*  
*mortgages.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 278, as amended, ~~Hill Eng. Department of Real Estate: citations.~~  
*Mortgages and deeds of trust: foreclosure.*

*(1) Existing law, until January 1, 2013, requires a mortgagee, trustee,  
beneficiary, or authorized agent to contact the borrower prior to filing  
a notice of default to explore options for the borrower to avoid  
foreclosure, as specified. Existing law requires a notice of default or,*

*in certain circumstances, a notice of sale, to include a declaration stating that the mortgagee, trustee, beneficiary, or authorized agent has contacted the borrower, or has tried with due diligence to contact the borrower, or that no contact was required for a specified reason.*

*This bill would add mortgage servicers, as defined, to these provisions and would extend the operation of these provisions indefinitely, except that it would delete the requirement with respect to a notice of sale. The bill would, until January 1, 2018, additionally require the borrower, as defined, to be provided with specified information in writing prior to recordation of a notice of default and, in certain circumstances, within 5 business days after recordation. The bill would prohibit a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent from recording a notice of default or, until January 1, 2018, recording a notice of sale or conducting a trustee's sale while a complete first lien loan modification application is pending, under specified conditions. The bill would, until January 1, 2018, establish additional procedures to be followed regarding a first lien loan modification application, the denial of an application, and a borrower's right to appeal a denial.*

*(2) Existing law imposes various requirements that must be satisfied prior to exercising a power of sale under a mortgage or deed of trust, including, among other things, recording a notice of default and a notice of sale.*

*The bill would, until January 1, 2018, require a written notice to the borrower after the postponement of a foreclosure sale in order to advise the borrower of any new sale date and time, as specified. The bill would provide that an entity shall not record a notice of default or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the deed of trust, the original or substituted trustee, or the designated agent of the holder of the beneficial interest, as specified.*

*The bill would prohibit recordation of a notice of default or a notice of sale or the conduct of a trustee's sale if a foreclosure prevention alternative has been approved and certain conditions exist and would, until January 1, 2018, require recordation of a rescission of those notices upon execution of a permanent foreclosure prevention alternative. The bill would, until January 1, 2018, prohibit the collection of application fees and the collection of late fees while a foreclosure prevention alternative is being considered, if certain criteria are met, and would require a subsequent mortgage servicer to honor any previously approved foreclosure prevention alternative.*

*The bill would authorize a borrower to seek an injunction and damages for violations of certain of the provisions described above, except as specified. The bill would authorize the greater of treble actual damages or \$50,000 in statutory damages if a violation of certain provisions is found to be intentional or reckless or resulted from willful misconduct, as specified. The bill would authorize the awarding of attorneys' fees for prevailing borrowers, as specified. Violations of these provisions by licensees of the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate would also be violations of those respective licensing laws. Because a violation of certain of those licensing laws is a crime, the bill would impose a state-mandated local program.*

*The bill would provide that the requirements imposed on mortgage servicers, and mortgagees, trustees, beneficiaries, and authorized agents, described above are applicable only to mortgages or deeds of trust secured by residential real property not exceeding 4 dwelling units that is owner-occupied, as defined, and, until January 1, 2018, only to those entities who conduct more than 175 foreclosure sales per year or annual reporting period, except as specified.*

*The bill would require, upon request from a borrower who requests a foreclosure prevention alternative, a mortgage servicer who conducts more than 175 foreclosure sales per year or annual reporting period to establish a single point of contact and provide the borrower with one or more direct means of communication with the single point of contact. The bill would specify various responsibilities of the single point of contact. The bill would define single point of contact for these purposes.*

*(3) Existing law prescribes documents that may be recorded or filed in court.*

*This bill would require that a specified declaration, notice of default, notice of sale, deed of trust, assignment of a deed of trust, substitution of trustee, or declaration or affidavit filed in any court relative to a foreclosure proceeding or recorded by or on behalf of a mortgage servicer shall be accurate and complete and supported by competent and reliable evidence. The bill would require that before recording or filing any of those documents, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information. The bill would, until January 1, 2018, provide that any mortgage servicer that engages in multiple and*

*repeated violations of these requirements shall be liable for a civil penalty of up to \$7,500 per mortgage or deed of trust, in an action brought by specified state and local government entities, and would also authorize administrative enforcement against licensees of the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate.*

*The bill would authorize the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate to adopt regulations applicable to persons and entities under their respective jurisdictions for purposes of the provisions described above. The bill would provide that a violation of those regulations would be enforceable only by the regulating agency.*

*(4) The bill would state findings and declarations of the Legislature in relation to foreclosures in the state generally, and would state the purposes of the bill.*

*(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. Existing law authorizes the commissioner, upon his or her own motion, and requires the commissioner, upon the verified complaint in writing of any person, to investigate the actions of a real estate licensee who has engaged in specified acts. If the commissioner finds that a licensee has committed those acts, existing law authorizes the commissioner to suspend or revoke a licensee's real estate license or to, instead, impose specified monetary penalties, which are required to be credited to the Recovery Account in the Real Estate Fund.~~

~~This bill would authorize the commissioner to issue citations to unlicensed persons the commissioner believes to be engaging in activities for which a real estate license is required or to licensees who are in violation of any provision of the Real Estate Law or any rule or order thereunder. The bill would authorize citations to include an order to correct the violation or to include an administrative penalty of up to \$2,500. The bill would require any fines collected pursuant to these provisions to be credited to the Recovery Account and made available for specified purposes upon appropriation by the Legislature.~~

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

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

- 1     SECTION 1. *The Legislature finds and declares all of the*  
2 *following:*  
3     (a) *California is still reeling from the economic impacts of a*  
4 *wave of residential property foreclosures that began in 2007. From*  
5 *2007 to 2011 alone, there were over 900,000 completed foreclosure*  
6 *sales. In 2011, 38 of the top 100 hardest hit ZIP Codes in the nation*  
7 *were in California, and the current wave of foreclosures continues*  
8 *apace. All of this foreclosure activity has adversely affected*  
9 *property values and resulted in less money for schools, public*  
10 *safety, and other public services. In addition, according to the*  
11 *Urban Institute, every foreclosure imposes significant costs on*  
12 *local governments, including an estimated nineteen thousand two*  
13 *hundred twenty-nine dollars (\$19,229) in local government costs.*  
14 *And the foreclosure crisis is not over; there remain more than two*  
15 *million “underwater” mortgages in California.*  
16     (b) *It is essential to the economic health of this state to mitigate*  
17 *the negative effects on the state and local economies and the*  
18 *housing market that are the result of continued foreclosures by*  
19 *modifying the foreclosure process to ensure that borrowers who*  
20 *may qualify for a foreclosure alternative are considered for, and*  
21 *have a meaningful opportunity to obtain, available loss mitigation*  
22 *options. These changes to the state’s foreclosure process are*  
23 *essential to ensure that the current crisis is not worsened by*  
24 *unnecessarily adding foreclosed properties to the market when an*  
25 *alternative to foreclosure may be available. Avoiding foreclosure,*  
26 *where possible, will help stabilize the state’s housing market and*  
27 *avoid the substantial, corresponding negative effects of*  
28 *foreclosures on families, communities, and the state and local*  
29 *economy.*  
30     (c) *This act is necessary to provide stability to California’s*  
31 *statewide and regional economies and housing market by*  
32 *facilitating opportunities for borrowers to pursue loss mitigation*  
33 *options.*  
34     SEC. 2. *Section 2920.5 is added to the Civil Code, to read:*

1     2920.5. For purposes of this article, the following definitions  
2     apply:

3     (a) “Mortgage servicer” means a person or entity who directly  
4     services a loan, or who is responsible for interacting with the  
5     borrower, managing the loan account on a daily basis including  
6     collecting and crediting periodic loan payments, managing any  
7     escrow account, or enforcing the note and security instrument,  
8     either as the current owner of the promissory note or as the current  
9     owner’s authorized agent. “Mortgage servicer” also means a  
10    subservicing agent to a master servicer by contract. “Mortgage  
11    servicer” shall not include a trustee, or a trustee’s authorized  
12    agent, acting under a power of sale pursuant to a deed of trust.

13    (b) “Foreclosure prevention alternative” means a first lien loan  
14    modification or another available loss mitigation option.

15    (c) (1) Unless otherwise provided and for purposes of Sections  
16    2923.4, 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11,  
17    2924.18, and 2924.19, “borrower” means any natural person who  
18    is a mortgagor or trustor and who is potentially eligible for any  
19    federal, state, or proprietary foreclosure prevention alternative  
20    program offered by, or through, his or her mortgage servicer.

21    (2) For purposes of the sections listed in paragraph (1),  
22    “borrower” shall not include any of the following:

23    (A) An individual who has surrendered the secured property as  
24    evidenced by either a letter confirming the surrender or delivery  
25    of the keys to the property to the mortgagee, trustee, beneficiary,  
26    or authorized agent.

27    (B) An individual who has contracted with an organization,  
28    person, or entity whose primary business is advising people who  
29    have decided to leave their homes on how to extend the foreclosure  
30    process and avoid their contractual obligations to mortgagees or  
31    beneficiaries.

32    (C) An individual who has filed a case under Chapter 7, 11, 12,  
33    or 13 of Title 11 of the United States Code and the bankruptcy  
34    court has not entered an order closing or dismissing the bankruptcy  
35    case, or granting relief from a stay of foreclosure.

36    (d) “First lien” means the most senior mortgage or deed of  
37    trust on the property that is the subject of the notice of default or  
38    notice of sale.

39    SEC. 3. Section 2923.4 is added to the Civil Code, to read:

2923.4. (a) *The purpose of the act that added this section is to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower's mortgage servicer, such as loan modifications or other alternatives to foreclosure. Nothing in the act that added this section, however, shall be interpreted to require a particular result of that process.*

(b) *Nothing in this article obviates or supersedes the obligations of the signatories to the consent judgment entered in the case entitled United States of America et al. v. Bank of America Corporation et al., filed in the United States District Court for the District of Columbia, case number 1:12-cv-00361 RMC.*

SEC. 4. *Section 2923.5 of the Civil Code is amended to read:*

2923.5. (a) (1) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not file record a notice of default pursuant to Section 2924 until both of the following:

(A) *Either 30 days after initial contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (g): (e).*

(B) *The mortgage servicer complies with paragraph (1) of subdivision (a) of Section 2924.18, if the borrower has provided a complete application as defined in subdivision (d) of Section 2924.18.*

(2) ~~A mortgagee, beneficiary, or authorized agent mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgagee, beneficiary, or authorized agent mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgagee, beneficiary, or authorized agent mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.~~

(b) A notice of default ~~filed~~ *recorded* pursuant to Section 2924 shall include a declaration that the ~~mortgagee, beneficiary, or authorized agent mortgage servicer~~ has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required *because the individual did not meet the definition of “borrower”* pursuant to subdivision ~~(h)~~ *(c)* of Section 2920.5.

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

(1) ~~States that the borrower was contacted to assess the borrower’s financial situation and to explore options for the borrower to avoid foreclosure.~~

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

~~(d)~~

(c) A ~~mortgagee’s, beneficiary’s, or authorized agent’s mortgage servicer’s~~ loss mitigation personnel may participate by telephone during any contact required by this section.

(e) ~~For purposes of this section, a “borrower” shall include a mortgagor or trustor.~~

~~(f)~~

(d) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other adviser to discuss with the ~~mortgagee, beneficiary, or authorized agent mortgage servicer~~, on the borrower’s behalf, the ~~borrower’s~~ *borrower’s* financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (a). Any loan modification or workout plan offered at the meeting by the ~~mortgagee, beneficiary, or authorized agent mortgage servicer~~ is subject to approval by the borrower.

~~(g)~~

(e) A notice of default may be ~~filed~~ *recorded* pursuant to Section 2924 when a ~~mortgagee, beneficiary, or authorized agent mortgage servicer~~ has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the



1 borrower occurred despite the due diligence of the ~~mortgagee,~~  
2 ~~beneficiary, or authorized agent mortgage servicer.~~ For purposes  
3 of this section, “due diligence” shall require and mean all of the  
4 following:

5 (1) A ~~mortgagee, beneficiary, or authorized agent mortgage~~  
6 ~~servicer~~ shall first attempt to contact a borrower by sending a  
7 first-class letter that includes the toll-free telephone number made  
8 available by HUD to find a HUD-certified housing counseling  
9 agency.

10 (2) (A) After the letter has been sent, the ~~mortgagee,~~  
11 ~~beneficiary, or authorized agent mortgage servicer~~ shall attempt  
12 to contact the borrower by telephone at least three times at different  
13 hours and on different days. Telephone calls shall be made to the  
14 primary telephone number on file.

15 (B) A ~~mortgagee, beneficiary, or authorized agent mortgage~~  
16 ~~servicer~~ may attempt to contact a borrower using an automated  
17 system to dial borrowers, provided that, if the telephone call is  
18 answered, the call is connected to a live representative of the  
19 ~~mortgagee, beneficiary, or authorized agent mortgage servicer.~~

20 (C) A ~~mortgagee, beneficiary, or authorized agent mortgage~~  
21 ~~servicer~~ satisfies the telephone contact requirements of this  
22 paragraph if it determines, after attempting contact pursuant to this  
23 paragraph, that the borrower’s primary telephone number and  
24 secondary telephone number or numbers on file, if any, have been  
25 disconnected.

26 (3) If the borrower does not respond within two weeks after the  
27 telephone call requirements of paragraph (2) have been satisfied,  
28 the ~~mortgagee, beneficiary, or authorized agent mortgage servicer~~  
29 shall then send a certified letter, with return receipt requested.

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

34 (5) The ~~mortgagee, beneficiary, or authorized agent mortgage~~  
35 ~~servicer~~ has posted a prominent link on the homepage of its Internet  
36 Web site, if any, to the following information:

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

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

5 (C) A toll-free telephone number for borrowers who wish to  
6 discuss options for avoiding foreclosure with their ~~mortgagee,~~  
7 ~~beneficiary, or authorized agent mortgage servicer.~~

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

10 ~~(h) Subdivisions (a), (c), and (g) shall not apply if any of the~~  
11 ~~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 on 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 ~~(i)~~  
26 ~~(f) This section shall apply only to mortgages or deeds of trust~~  
27 ~~recorded from January 1, 2003, to December 31, 2007, inclusive,~~  
28 ~~that are secured by owner-occupied residential real property~~  
29 ~~containing no more than four dwelling units. For purposes of this~~  
30 ~~subdivision, "owner-occupied" means that the residence is the~~  
31 ~~principal residence of the borrower as indicated to the lender~~  
32 ~~described in loan documents Section 2924.15.~~

33 ~~(g) This section shall apply only to entities described in~~  
34 ~~subdivision (b) of Section 2924.18.~~

35 ~~(j)~~  
36 ~~(h) This section shall remain in effect only until January 1, 2013,~~  
37 ~~2018, and as of that date is repealed, unless a later enacted statute,~~  
38 ~~that is enacted before January 1, 2013, 2018, deletes or extends~~  
39 ~~that date.~~

40 *SEC. 5. Section 2923.5 is added to the Civil Code, to read:*

1     2923.5. (a) (1) A mortgage servicer, mortgagee, trustee,  
2     beneficiary, or authorized agent may not record a notice of default  
3     pursuant to Section 2924 until both of the following:

4     (A) Either 30 days after initial contact is made as required by  
5     paragraph (2) or 30 days after satisfying the due diligence  
6     requirements as described in subdivision (e).

7     (B) The mortgage servicer complies with subdivision (a) of  
8     Section 2924.11, if the borrower has provided a complete  
9     application as defined in subdivision (f) of Section 2924.11.

10    (2) A mortgage servicer shall contact the borrower in person  
11    or by telephone in order to assess the borrower's financial situation  
12    and explore options for the borrower to avoid foreclosure. During  
13    the initial contact, the mortgage servicer shall advise the borrower  
14    that he or she has the right to request a subsequent meeting and,  
15    if requested, the mortgage servicer shall schedule the meeting to  
16    occur within 14 days. The assessment of the borrower's financial  
17    situation and discussion of options may occur during the first  
18    contact, or at the subsequent meeting scheduled for that purpose.  
19    In either case, the borrower shall be provided the toll-free  
20    telephone number made available by the United States Department  
21    of Housing and Urban Development (HUD) to find a  
22    HUD-certified housing counseling agency. Any meeting may occur  
23    telephonically.

24    (b) A notice of default recorded pursuant to Section 2924 shall  
25    include a declaration that the mortgage servicer has contacted  
26    the borrower, has tried with due diligence to contact the borrower  
27    as required by this section, or that no contact was required because  
28    the individual did not meet the definition of "borrower" pursuant  
29    to subdivision (c) of Section 2920.5.

30    (c) A mortgage servicer's loss mitigation personnel may  
31    participate by telephone during any contact required by this  
32    section.

33    (d) A borrower may designate, with consent given in writing, a  
34    HUD-certified housing counseling agency, attorney, or other  
35    adviser to discuss with the mortgage servicer, on the borrower's  
36    behalf, the borrower's financial situation and options for the  
37    borrower to avoid foreclosure. That contact made at the direction  
38    of the borrower shall satisfy the contact requirements of paragraph  
39    (2) of subdivision (a). Any loan modification or workout plan

1 offered at the meeting by the mortgage servicer is subject to  
2 approval by the borrower.

3 (e) A notice of default may be recorded pursuant to Section  
4 2924 when a mortgage servicer has not contacted a borrower as  
5 required by paragraph (2) of subdivision (a) provided that the  
6 failure to contact the borrower occurred despite the due diligence  
7 of the mortgage servicer. For purposes of this section, “due  
8 diligence” shall require and mean all of the following:

9 (1) A mortgage servicer shall first attempt to contact a borrower  
10 by sending a first-class letter that includes the toll-free telephone  
11 number made available by HUD to find a HUD-certified housing  
12 counseling agency.

13 (2) (A) After the letter has been sent, the mortgage servicer  
14 shall attempt to contact the borrower by telephone at least three  
15 times at different hours and on different days. Telephone calls  
16 shall be made to the primary telephone number on file.

17 (B) A mortgage servicer may attempt to contact a borrower  
18 using an automated system to dial borrowers, provided that, if the  
19 telephone call is answered, the call is connected to a live  
20 representative of the mortgage servicer.

21 (C) A mortgage servicer satisfies the telephone contact  
22 requirements of this paragraph if it determines, after attempting  
23 contact pursuant to this paragraph, that the borrower’s primary  
24 telephone number and secondary telephone number or numbers  
25 on file, if any, have been disconnected.

26 (3) If the borrower does not respond within two weeks after the  
27 telephone call requirements of paragraph (2) have been satisfied,  
28 the mortgage servicer shall then send a certified letter, with return  
29 receipt requested.

30 (4) The mortgage servicer shall provide a means for the  
31 borrower to contact it in a timely manner, including a toll-free  
32 telephone number that will provide access to a live representative  
33 during business hours.

34 (5) The mortgage servicer has posted a prominent link on the  
35 homepage of its Internet Web site, if any, to the following  
36 information:

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

1 (B) A list of financial documents borrowers should collect and  
2 be prepared to present to the mortgage servicer when discussing  
3 options for avoiding foreclosure.

4 (C) A toll-free telephone number for borrowers who wish to  
5 discuss options for avoiding foreclosure with their mortgage  
6 servicer.

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

9 (f) This section shall apply only to mortgages or deeds of trust  
10 described in Section 2924.15.

11 (g) This section shall become operative on January 1, 2018.

12 SEC. 6. Section 2923.55 is added to the Civil Code, to read:

13 2923.55. (a) A mortgage servicer, mortgagee, trustee,  
14 beneficiary, or authorized agent may not record a notice of default  
15 pursuant to Section 2924 until all of the following:

16 (1) The mortgage servicer has satisfied the requirements of  
17 paragraph (1) of subdivision (b).

18 (2) Either 30 days after initial contact is made as required by  
19 paragraph (2) of subdivision (b) or 30 days after satisfying the  
20 due diligence requirements as described in subdivision (f).

21 (3) The mortgage servicer complies with subdivision (c) of  
22 Section 2923.6, if the borrower has provided a complete  
23 application as defined in subdivision (h) of Section 2923.6.

24 (b) (1) As specified in subdivision (a), a mortgage servicer shall  
25 send the following information in writing to the borrower:

26 (A) A statement that if the borrower is a servicemember or a  
27 dependent of a servicemember, he or she may be entitled to certain  
28 protections under the federal Servicemembers Civil Relief Act (50  
29 U.S.C. Sec. 501 et seq.) regarding the servicemember's interest  
30 rate and the risk of foreclosure, and counseling for covered  
31 servicemembers that is available at agencies such as Military  
32 OneSource and Armed Forces Legal Assistance.

33 (B) A statement that the borrower may request the following:

34 (i) A copy of the borrower's promissory note or other evidence  
35 of indebtedness.

36 (ii) A copy of the borrower's deed of trust or mortgage.

37 (iii) A copy of any assignment, if applicable, of the borrower's  
38 mortgage or deed of trust required to demonstrate the right of the  
39 mortgage servicer to foreclose.

1     (iv) *A copy of the borrower's payment history since the borrower*  
2 *was last less than 60 days past due.*

3     (2) *A mortgage servicer shall contact the borrower in person*  
4 *or by telephone in order to assess the borrower's financial situation*  
5 *and explore options for the borrower to avoid foreclosure. During*  
6 *the initial contact, the mortgage servicer shall advise the borrower*  
7 *that he or she has the right to request a subsequent meeting and,*  
8 *if requested, the mortgage servicer shall schedule the meeting to*  
9 *occur within 14 days. The assessment of the borrower's financial*  
10 *situation and discussion of options may occur during the first*  
11 *contact, or at the subsequent meeting scheduled for that purpose.*  
12 *In either case, the borrower shall be provided the toll-free*  
13 *telephone number made available by the United States Department*  
14 *of Housing and Urban Development (HUD) to find a*  
15 *HUD-certified housing counseling agency. Any meeting may occur*  
16 *telephonically.*

17     (c) *A notice of default recorded pursuant to Section 2924 shall*  
18 *include a declaration that the mortgage servicer has contacted*  
19 *the borrower, has tried with due diligence to contact the borrower*  
20 *as required by this section, or that no contact was required because*  
21 *the individual did not meet the definition of "borrower" pursuant*  
22 *to subdivision (c) of Section 2920.5.*

23     (d) *A mortgage servicer's loss mitigation personnel may*  
24 *participate by telephone during any contact required by this*  
25 *section.*

26     (e) *A borrower may designate, with consent given in writing, a*  
27 *HUD-certified housing counseling agency, attorney, or other*  
28 *adviser to discuss with the mortgage servicer, on the borrower's*  
29 *behalf, the borrower's financial situation and options for the*  
30 *borrower to avoid foreclosure. That contact made at the direction*  
31 *of the borrower shall satisfy the contact requirements of paragraph*  
32 *(2) of subdivision (b). Any foreclosure prevention alternative*  
33 *offered at the meeting by the mortgage servicer is subject to*  
34 *approval by the borrower.*

35     (f) *A notice of default may be recorded pursuant to Section 2924*  
36 *when a mortgage servicer has not contacted a borrower as*  
37 *required by paragraph (2) of subdivision (b), provided that the*  
38 *failure to contact the borrower occurred despite the due diligence*  
39 *of the mortgage servicer. For purposes of this section, "due*  
40 *diligence" shall require and mean all of the following:*

1     (1) A mortgage servicer shall first attempt to contact a borrower  
2     by sending a first-class letter that includes the toll-free telephone  
3     number made available by HUD to find a HUD-certified housing  
4     counseling agency.

5     (2) (A) After the letter has been sent, the mortgage servicer shall  
6     attempt to contact the borrower by telephone at least three times  
7     at different hours and on different days. Telephone calls shall be  
8     made to the primary telephone number on file.

9     (B) A mortgage servicer may attempt to contact a borrower  
10    using an automated system to dial borrowers, provided that, if the  
11    telephone call is answered, the call is connected to a live  
12    representative of the mortgage servicer.

13    (C) A mortgage servicer satisfies the telephone contact  
14    requirements of this paragraph if it determines, after attempting  
15    contact pursuant to this paragraph, that the borrower's primary  
16    telephone number and secondary telephone number or numbers  
17    on file, if any, have been disconnected.

18    (3) If the borrower does not respond within two weeks after the  
19    telephone call requirements of paragraph (2) have been satisfied,  
20    the mortgage servicer shall then send a certified letter, with return  
21    receipt requested, that includes the toll-free telephone number  
22    made available by HUD to find a HUD-certified housing  
23    counseling agency.

24    (4) The mortgage servicer shall provide a means for the  
25    borrower to contact it in a timely manner, including a toll-free  
26    telephone number that will provide access to a live representative  
27    during business hours.

28    (5) The mortgage servicer has posted a prominent link on the  
29    homepage of its Internet Web site, if any, to the following  
30    information:

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

35    (B) A list of financial documents borrowers should collect and  
36    be prepared to present to the mortgage servicer when discussing  
37    options for avoiding foreclosure.

38    (C) A toll-free telephone number for borrowers who wish to  
39    discuss options for avoiding foreclosure with their mortgage  
40    servicer.

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

3     (g) *This section shall not apply to entities described in*  
4 *subdivision (b) of Section 2924.18.*

5     (h) *This section shall apply only to mortgages or deeds of trust*  
6 *described in Section 2924.15.*

7     (i) *This section shall remain in effect only until January 1,*  
8 *2018, and as of that date is repealed, unless a later enacted statute,*  
9 *that is enacted before January 1, 2018, deletes or extends that*  
10 *date.*

11     SEC. 7. *Section 2923.6 of the Civil Code is amended to read:*

12     2923.6. (a) The Legislature finds and declares that any duty  
13 *that mortgage servicers may have to maximize net present value*  
14 *under their pooling and servicing agreements is owed to all parties*  
15 *in a loan pool, or to all investors under a pooling and servicing*  
16 *agreement, not to any particular party in the loan pool or investor*  
17 *under a ~~pooling~~ pooling and servicing agreement, and that a*  
18 *mortgage servicer acts in the best interests of all parties to the loan*  
19 *pool or investors in the pooling and servicing agreement if it agrees*  
20 *to or implements a loan modification or workout plan for which*  
21 *both of the following apply:*

22     (1) *The loan is in payment default, or payment default is*  
23 *reasonably foreseeable.*

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

27     (b) *It is the intent of the Legislature that the ~~mortgagee,~~*  
28 *~~beneficiary, or authorized agent mortgage servicer~~ offer the*  
29 *borrower a loan modification or workout plan if such a*  
30 *modification or plan is consistent with its contractual or other*  
31 *authority.*

32     (c) *If a borrower submits a complete application for a first lien*  
33 *loan modification offered by, or through, the borrower's mortgage*  
34 *servicer, a mortgage servicer, mortgagee, trustee, beneficiary, or*  
35 *authorized agent shall not record a notice of default or notice of*  
36 *sale, or conduct a trustee's sale, while the complete first lien loan*  
37 *modification application is pending. A mortgage servicer,*  
38 *mortgagee, trustee, beneficiary, or authorized agent shall not*  
39 *record a notice of default or notice of sale or conduct a trustee's*  
40 *sale until any of the following occurs:*



1     (1) *The mortgage servicer makes a written determination that*  
2 *the borrower is not eligible for a first lien loan modification, and*  
3 *any appeal period pursuant to subdivision (d) has expired.*

4     (2) *The borrower does not accept an offered first lien loan*  
5 *modification within 14 days of the offer.*

6     (3) *The borrower accepts a written first lien loan modification,*  
7 *but defaults on, or otherwise breaches the borrower's obligations*  
8 *under, the first lien loan modification.*

9     (d) *If the borrower's application for a first lien loan modification*  
10 *is denied, the borrower shall have at least 30 days from the date*  
11 *of the written denial to appeal the denial and to provide evidence*  
12 *that the mortgage servicer's determination was in error.*

13     (e) *If the borrower's application for a first lien loan modification*  
14 *is denied, the mortgage servicer, mortgagee, trustee, beneficiary,*  
15 *or authorized agent shall not record a notice of default or, if a*  
16 *notice of default has already been recorded, record a notice of*  
17 *sale or conduct a trustee's sale until the later of:*

18     (1) *Thirty-one days after the borrower is notified in writing of*  
19 *the denial.*

20     (2) *If the borrower appeals the denial pursuant to subdivision*  
21 *(d), the later of 15 days after the denial of the appeal or 14 days*  
22 *after a first lien loan modification is offered after appeal but*  
23 *declined by the borrower, or, if a first lien loan modification is*  
24 *offered and accepted after appeal, the date on which the borrower*  
25 *fails to timely submit the first payment or otherwise breaches the*  
26 *terms of the offer.*

27     (f) *Following the denial of a first lien loan modification*  
28 *application, the mortgage servicer shall send a written notice to*  
29 *the borrower identifying the reasons for denial, including the*  
30 *following:*

31     (1) *The amount of time from the date of the denial letter in which*  
32 *the borrower may request an appeal of the denial of the first lien*  
33 *loan modification and instructions regarding how to appeal the*  
34 *denial.*

35     (2) *If the denial was based on investor disallowance, the specific*  
36 *reasons for the investor disallowance.*

37     (3) *If the denial is the result of a net present value calculation,*  
38 *the monthly gross income and property value used to calculate the*  
39 *net present value and a statement that the borrower may obtain*

1 all of the inputs used in the net present value calculation upon  
2 written request to the mortgage servicer.

3 (4) If applicable, a finding that the borrower was previously  
4 offered a first lien loan modification and failed to successfully  
5 make payments under the terms of the modified loan.

6 (5) If applicable, a description of other foreclosure prevention  
7 alternatives for which the borrower may be eligible, and a list of  
8 the steps the borrower must take in order to be considered for  
9 those options. If the mortgage servicer has already approved the  
10 borrower for another foreclosure prevention alternative,  
11 information necessary to complete the foreclosure prevention  
12 alternative.

13 (g) In order to minimize the risk of borrowers submitting  
14 multiple applications for first lien loan modifications for the  
15 purpose of delay, the mortgage servicer shall not be obligated to  
16 evaluate applications from borrowers who have already been  
17 evaluated or afforded a fair opportunity to be evaluated for a first  
18 lien loan modification prior to January 1, 2013, or who have been  
19 evaluated or afforded a fair opportunity to be evaluated consistent  
20 with the requirements of this section, unless there has been a  
21 material change in the borrower's financial circumstances since  
22 the date of the borrower's previous application and that change  
23 is documented by the borrower and submitted to the mortgage  
24 servicer.

25 (h) For purposes of this section, an application shall be deemed  
26 "complete" when a borrower has supplied the mortgage servicer  
27 with all documents required by the mortgage servicer within the  
28 reasonable timeframes specified by the mortgage servicer.

29 (i) Subdivisions (c) to (h), inclusive, shall not apply to entities  
30 described in subdivision (b) of Section 2924.18.

31 (j) This section shall apply only to mortgages or deeds of trust  
32 described in Section 2924.15.

33 (e)

34 (k) This section shall remain in effect only until January 1,  
35 2013, 2018, and as of that date is repealed, unless a later enacted  
36 statute, that is enacted before January 1, 2013, 2018, deletes or  
37 extends that date.

38 SEC. 8. Section 2923.6 is added to the Civil Code, to read:

39 2923.6. (a) The Legislature finds and declares that any duty  
40 mortgage servicers may have to maximize net present value under

1 *their pooling and servicing agreements is owed to all parties in a*  
2 *loan pool, or to all investors under a pooling and servicing*  
3 *agreement, not to any particular party in the loan pool or investor*  
4 *under a pooling and servicing agreement, and that a mortgage*  
5 *servicer acts in the best interests of all parties to the loan pool or*  
6 *investors in the pooling and servicing agreement if it agrees to or*  
7 *implements a loan modification or workout plan for which both*  
8 *of the following apply:*

9 *(1) The loan is in payment default, or payment default is*  
10 *reasonably foreseeable.*

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

14 *(b) It is the intent of the Legislature that the mortgage servicer*  
15 *offer the borrower a loan modification or workout plan if such a*  
16 *modification or plan is consistent with its contractual or other*  
17 *authority.*

18 *(c) This section shall become operative on January 1, 2018.*

19 *SEC. 9. Section 2923.7 is added to the Civil Code, to read:*

20 *2923.7. (a) Upon request from a borrower who requests a*  
21 *foreclosure prevention alternative, the mortgage servicer shall*  
22 *promptly establish a single point of contact and provide to the*  
23 *borrower one or more direct means of communication with the*  
24 *single point of contact.*

25 *(b) The single point of contact shall be responsible for doing*  
26 *all of the following:*

27 *(1) Communicating the process by which a borrower may apply*  
28 *for an available foreclosure prevention alternative and the deadline*  
29 *for any required submissions to be considered for these options.*

30 *(2) Coordinating receipt of all documents associated with*  
31 *available foreclosure prevention alternatives and notifying the*  
32 *borrower of any missing documents necessary to complete the*  
33 *application.*

34 *(3) Having access to current information and personnel*  
35 *sufficient to timely, accurately, and adequately inform the borrower*  
36 *of the current status of the foreclosure prevention alternative.*

37 *(4) Ensuring that a borrower is considered for all foreclosure*  
38 *prevention alternatives offered by, or through, the mortgage*  
39 *servicer, if any.*

1     (5) *Having access to individuals with the ability and authority*  
2 *to stop foreclosure proceedings when necessary.*

3     (c) *The single point of contact shall remain assigned to the*  
4 *borrower's account until the mortgage servicer determines that*  
5 *all loss mitigation options offered by, or through, the mortgage*  
6 *servicer have been exhausted or the borrower's account becomes*  
7 *current.*

8     (d) *The mortgage servicer shall ensure that a single point of*  
9 *contact refers and transfers a borrower to an appropriate*  
10 *supervisor upon request of the borrower, if the single point of*  
11 *contact has a supervisor.*

12     (e) *For purposes of this section, "single point of contact" means*  
13 *an individual or team of personnel each of whom has the ability*  
14 *and authority to perform the responsibilities described in*  
15 *subdivisions (b) to (d), inclusive. The mortgage servicer shall*  
16 *ensure that each member of the team is knowledgeable about the*  
17 *borrower's situation and current status in the alternatives to*  
18 *foreclosure process.*

19     (f) *This section shall apply only to mortgages or deeds of trust*  
20 *described in Section 2924.15.*

21     (g) (1) *This section shall not apply to a depository institution*  
22 *chartered under state or federal law, a person licensed pursuant*  
23 *to Division 9 (commencing with Section 22000) or Division 20*  
24 *(commencing with Section 50000) of the Financial Code, or a*  
25 *person licensed pursuant to Part 1 (commencing with Section*  
26 *10000) of Division 4 of the Business and Professions Code, that,*  
27 *during its immediately preceding annual reporting period, as*  
28 *established with its primary regulator, foreclosed on 175 or fewer*  
29 *residential real properties, containing no more than four dwelling*  
30 *units, that are located in California.*

31     (2) *Within three months after the close of any calendar year or*  
32 *annual reporting period as established with its primary regulator*  
33 *during which an entity or person described in paragraph (1)*  
34 *exceeds the threshold of 175 specified in paragraph (1), that entity*  
35 *shall notify its primary regulator, in a manner acceptable to its*  
36 *primary regulator, and any mortgagor or trustor who is delinquent*  
37 *on a residential mortgage loan serviced by that entity of the date*  
38 *on which that entity will be subject to this section, which date shall*  
39 *be the first day of the first month that is six months after the close*

1 *of the calendar year or annual reporting period during which that*  
2 *entity exceeded the threshold.*

3 *SEC. 10. Section 2924 of the Civil Code, as amended by Section*  
4 *1 of Chapter 180 of the Statutes of 2010, is amended to read:*

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

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

28 (A) A statement identifying the mortgage or deed of trust by  
29 stating the name or names of the trustor or trustors and giving the  
30 book and page, or instrument number, if applicable, where the  
31 mortgage or deed of trust is recorded or a description of the  
32 mortgaged or trust property.

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

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

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

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

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

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

*(5) Until January 1, 2018, whenever a sale is postponed for a period of at least 10 business days pursuant to Section 2924g, a mortgagee, beneficiary, or authorized agent shall provide written notice to a borrower regarding the new sale date and time, within five business days following the postponement. Information provided pursuant to this paragraph shall not constitute the public declaration required by subdivision (d) of Section 2924g. Failure to comply with this paragraph shall not invalidate any sale that would otherwise be valid under Section 2924f. This paragraph shall be inoperative on January 1, 2018.*

*(6) No entity shall record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest. No agent of the holder of the beneficial interest under the mortgage or deed of trust, original trustee or substituted trustee under the deed of trust may record a notice of default or otherwise commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest.*

(b) In performing acts required by this article, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding

1 the nature and the amount of the default under the secured  
2 obligation, deed of trust, or mortgage. In performing the acts  
3 required by this article, a trustee shall not be subject to Title 1.6c  
4 (commencing with Section 1788) of Part 4.

5 (c) A recital in the deed executed pursuant to the power of sale  
6 of compliance with all requirements of law regarding the mailing  
7 of copies of notices or the publication of a copy of the notice of  
8 default or the personal delivery of the copy of the notice of default  
9 or the posting of copies of the notice of sale or the publication of  
10 a copy thereof shall constitute prima facie evidence of compliance  
11 with these requirements and conclusive evidence thereof in favor  
12 of bona fide purchasers and encumbrancers for value and without  
13 notice.

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

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

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

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

23 (e) There is a rebuttable presumption that the beneficiary  
24 actually knew of all unpaid loan payments on the obligation owed  
25 to the beneficiary and secured by the deed of trust or mortgage  
26 subject to the notice of default. However, the failure to include an  
27 actually known default shall not invalidate the notice of sale and  
28 the beneficiary shall not be precluded from asserting a claim to  
29 this omitted default or defaults in a separate notice of default.

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

31 *SEC. 11. Section 2924 of the Civil Code, as amended by Section*  
32 *2 of Chapter 180 of the Statutes of 2010, is repealed.*

33 ~~2924. (a) Every transfer of an interest in property, other than~~  
34 ~~in trust, made only as a security for the performance of another~~  
35 ~~act, is to be deemed a mortgage, except when in the case of~~  
36 ~~personal property it is accompanied by actual change of possession,~~  
37 ~~in which case it is to be deemed a pledge. Where, by a mortgage~~  
38 ~~created after July 27, 1917, of any estate in real property, other~~  
39 ~~than an estate at will or for years, less than two, or in any transfer~~  
40 ~~in trust made after July 27, 1917, of a like estate to secure the~~

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

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

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

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

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

28 (D) If the default is curable pursuant to Section 2924e, the  
29 statement specified in paragraph (1) of subdivision (b) of Section  
30 2924e.

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

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

38 (4) Notwithstanding paragraph (3), the mortgagee, trustee, or  
39 other person authorized to take sale may file a notice of sale  
40 pursuant to Section 2924f up to five days before the lapse of the



1 ~~three-month period described in paragraph (2), provided that the~~  
2 ~~date of sale is no earlier than three months and 20 days after the~~  
3 ~~filing of the notice of default.~~

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

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

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

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

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

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

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

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

37 *SEC. 12. Section 2924.9 is added to the Civil Code, to read:*

38 *2924.9. (a) Unless a borrower has previously exhausted the*  
39 *first lien loan modification process offered by, or through, his or*  
40 *her mortgage servicer described in Section 2923.6, within five*

1 business days after recording a notice of default pursuant to  
2 Section 2924, a mortgage servicer that offers one or more  
3 foreclosure prevention alternatives shall send a written  
4 communication to the borrower that includes all of the following  
5 information:

6 (1) That the borrower may be evaluated for a foreclosure  
7 prevention alternative or, if applicable, foreclosure prevention  
8 alternatives.

9 (2) Whether an application is required to be submitted by the  
10 borrower in order to be considered for a foreclosure prevention  
11 alternative.

12 (3) The means and process by which a borrower may obtain an  
13 application for a foreclosure prevention alternative.

14 (b) This section shall not apply to entities described in  
15 subdivision (b) of Section 2924.18.

16 (c) This section shall apply only to mortgages or deeds of trust  
17 described in Section 2924.15.

18 (d) This section shall remain in effect only until January 1,  
19 2018, and as of that date is repealed, unless a later enacted statute,  
20 that is enacted before January 1, 2018, deletes or extends that  
21 date.

22 SEC. 13. Section 2924.10 is added to the Civil Code, to read:

23 2924.10. (a) When a borrower submits a complete first lien  
24 modification application or any document in connection with a  
25 first lien modification application, the mortgage servicer shall  
26 provide written acknowledgment of the receipt of the  
27 documentation within five business days of receipt. In its initial  
28 acknowledgment of receipt of the loan modification application,  
29 the mortgage servicer shall include the following information:

30 (1) A description of the loan modification process, including  
31 an estimate of when a decision on the loan modification will be  
32 made after a complete application has been submitted by the  
33 borrower and the length of time the borrower will have to consider  
34 an offer of a loan modification or other foreclosure prevention  
35 alternative.

36 (2) Any deadlines, including deadlines to submit missing  
37 documentation, that would affect the processing of a first lien loan  
38 modification application.

39 (3) Any expiration dates for submitted documents.

1     (4) Any deficiency in the borrower's first lien loan modification  
2 application.

3     (b) For purposes of this section, a borrower's first lien loan  
4 modification application shall be deemed to be "complete" when  
5 a borrower has supplied the mortgage servicer with all documents  
6 required by the mortgage servicer within the reasonable timeframes  
7 specified by the mortgage servicer.

8     (c) This section shall not apply to entities described in  
9 subdivision (b) of Section 2924.18.

10    (d) This section shall apply only to mortgages or deeds of trust  
11 described in Section 2924.15.

12    (e) This section shall remain in effect only until January 1,  
13 2018, and as of that date is repealed, unless a later enacted statute,  
14 that is enacted before January 1, 2018, deletes or extends that  
15 date.

16    SEC. 14. Section 2924.11 is added to the Civil Code, to read:

17    2924.11. (a) If a foreclosure prevention alternative is approved  
18 in writing prior to the recordation of a notice of default, a  
19 mortgage servicer, mortgagee, trustee, beneficiary, or authorized  
20 agent shall not record a notice of default under either of the  
21 following circumstances:

22     (1) The borrower is in compliance with the terms of a written  
23 trial or permanent loan modification, forbearance, or repayment  
24 plan.

25     (2) A foreclosure prevention alternative has been approved in  
26 writing by all parties, including, for example, the first lien investor,  
27 junior lienholder, and mortgage insurer, as applicable, and proof  
28 of funds or financing has been provided to the servicer.

29    (b) If a foreclosure prevention alternative is approved in writing  
30 after the recordation of a notice of default, a mortgage servicer,  
31 mortgagee, trustee, beneficiary, or authorized agent shall not  
32 record a notice of sale or conduct a trustee's sale under either of  
33 the following circumstances:

34     (1) The borrower is in compliance with the terms of a written  
35 trial or permanent loan modification, forbearance, or repayment  
36 plan.

37     (2) A foreclosure prevention alternative has been approved in  
38 writing by all parties, including, for example, the first lien investor,  
39 junior lienholder, and mortgage insurer, as applicable, and proof  
40 of funds or financing has been provided to the servicer.

1 (c) When a borrower accepts an offered first lien loan  
2 modification or other foreclosure prevention alternative, the  
3 mortgage servicer shall provide the borrower with a copy of the  
4 fully executed loan modification agreement or agreement  
5 evidencing the foreclosure prevention alternative following receipt  
6 of the executed copy from the borrower.

7 (d) A mortgagee, beneficiary, or authorized agent shall record  
8 a rescission of a notice of default or cancel a pending trustee's  
9 sale, if applicable, upon the borrower executing a permanent  
10 foreclosure prevention alternative. In the case of a short sale, the  
11 rescission or cancellation of the pending trustee's sale shall occur  
12 when the short sale has been approved by all parties and proof of  
13 funds or financing has been provided to the mortgagee, beneficiary,  
14 or authorized agent.

15 (e) The mortgage servicer shall not charge any application,  
16 processing, or other fee for a first lien loan modification or other  
17 foreclosure prevention alternative.

18 (f) The mortgage servicer shall not collect any late fees for  
19 periods during which a complete first lien loan modification  
20 application is under consideration or a denial is being appealed,  
21 the borrower is making timely modification payments, or a  
22 foreclosure prevention alternative is being evaluated or exercised.

23 (g) If a borrower has been approved in writing for a first lien  
24 loan modification or other foreclosure prevention alternative, and  
25 the servicing of that borrower's loan is transferred or sold to  
26 another mortgage servicer, the subsequent mortgage servicer shall  
27 continue to honor any previously approved first lien loan  
28 modification or other foreclosure prevention alternative, in  
29 accordance with the provisions of the act that added this section.

30 (h) This section shall apply only to mortgages or deeds of trust  
31 described in Section 2924.15.

32 (i) This section shall not apply to entities described in  
33 subdivision (b) of Section 2924.18.

34 (j) This section shall remain in effect only until January 1,  
35 2018, and as of that date is repealed, unless a later enacted statute,  
36 that is enacted before January 1, 2018, deletes or extends that  
37 date.

38 SEC. 15. Section 2924.11 is added to the Civil Code, to read:

39 2924.11. (a) If a borrower submits a complete application for  
40 a foreclosure prevention alternative offered by, or through, the

1 borrower's mortgage servicer, a mortgage servicer, trustee,  
2 mortgagee, beneficiary, or authorized agent shall not record a  
3 notice of sale or conduct a trustee's sale while the complete  
4 foreclosure prevention alternative application is pending, and  
5 until the borrower has been provided with a written determination  
6 by the mortgage servicer regarding that borrower's eligibility for  
7 the requested foreclosure prevention alternative.

8 (b) Following the denial of a first lien loan modification  
9 application, the mortgage servicer shall send a written notice to  
10 the borrower identifying with specificity the reasons for the denial  
11 and shall include a statement that the borrower may obtain  
12 additional documentation supporting the denial decision upon  
13 written request to the mortgage servicer.

14 (c) If a foreclosure prevention alternative is approved in writing  
15 prior to the recordation of a notice of default, a mortgage servicer,  
16 mortgagee, trustee, beneficiary, or authorized agent shall not  
17 record a notice of default under either of the following  
18 circumstances:

19 (1) The borrower is in compliance with the terms of a written  
20 trial or permanent loan modification, forbearance, or repayment  
21 plan.

22 (2) A foreclosure prevention alternative has been approved in  
23 writing by all parties, including, for example, the first lien investor,  
24 junior lienholder, and mortgage insurer, as applicable, and proof  
25 of funds or financing has been provided to the servicer.

26 (d) If a foreclosure prevention alternative is approved in writing  
27 after the recordation of a notice of default, a mortgage servicer,  
28 mortgagee, trustee, beneficiary, or authorized agent shall not  
29 record a notice of sale or conduct a trustee's sale under either of  
30 the following circumstances:

31 (1) The borrower is in compliance with the terms of a written  
32 trial or permanent loan modification, forbearance, or repayment  
33 plan.

34 (2) A foreclosure prevention alternative has been approved in  
35 writing by all parties, including, for example, the first lien investor,  
36 junior lienholder, and mortgage insurer, as applicable, and proof  
37 of funds or financing has been provided to the servicer.

38 (e) This section applies only to mortgages or deeds of trust as  
39 described in Section 2924.15.

1 (f) For purposes of this section, an application shall be deemed  
2 “complete” when a borrower has supplied the mortgage servicer  
3 with all documents required by the mortgage servicer within the  
4 reasonable timeframes specified by the mortgage servicer.

5 (g) This section shall become operative on January 1, 2018.

6 SEC. 16. Section 2924.12 is added to the Civil Code, to read:

7 2924.12. (a) (1) If a trustee’s deed upon sale has not been  
8 recorded, a borrower may bring an action for injunctive relief to  
9 enjoin a material violation of Section 2923.55, 2923.6, 2923.7,  
10 2924.9, 2924.10, 2924.11, or 2924.17.

11 (2) Any injunction shall remain in place and any trustee’s sale  
12 shall be enjoined until the court determines that the mortgage  
13 servicer, mortgagee, trustee, beneficiary, or authorized agent has  
14 corrected and remedied the violation or violations giving rise to  
15 the action for injunctive relief. An enjoined entity may move to  
16 dissolve an injunction based on a showing that the material  
17 violation has been corrected and remedied.

18 (b) After a trustee’s deed upon sale has been recorded, a  
19 mortgage servicer, mortgagee, trustee, beneficiary, or authorized  
20 agent shall be liable to a borrower for actual economic damages  
21 pursuant to Section 3281, resulting from a material violation of  
22 Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or  
23 2924.17 by that mortgage servicer, mortgagee, trustee, beneficiary,  
24 or authorized agent where the violation was not corrected and  
25 remedied prior to the recordation of the trustee’s deed upon sale.  
26 If the court finds that the material violation was intentional or  
27 reckless, or resulted from willful misconduct by a mortgage  
28 servicer, mortgagee, trustee, beneficiary, or authorized agent, the  
29 court may award the borrower the greater of treble actual damages  
30 or statutory damages of fifty thousand dollars (\$50,000).

31 (c) A mortgage servicer, mortgagee, trustee, beneficiary, or  
32 authorized agent shall not be liable for any violation that it has  
33 corrected and remedied prior to the recordation of a trustee’s deed  
34 upon sale, or that has been corrected and remedied by third parties  
35 working on its behalf prior to the recordation of a trustee’s deed  
36 upon sale.

37 (d) A violation of Section 2923.55, 2923.6, 2923.7, 2924.9,  
38 2924.10, 2924.11, or 2924.17 by a person licensed by the  
39 Department of Corporations, Department of Financial Institutions,

1 *or Department of Real Estate shall be deemed to be a violation of*  
2 *that person's licensing law.*

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

6 *(f) A third-party encumbrancer shall not be relieved of liability*  
7 *resulting from violations of Section 2923.55, 2923.6, 2923.7,*  
8 *2924.9, 2924.10, 2924.11, or 2924.17 committed by that third-party*  
9 *encumbrancer, that occurred prior to the sale of the subject*  
10 *property to the bona fide purchaser.*

11 *(g) A signatory to a consent judgment entered in the case entitled*  
12 *United States of America et al. v. Bank of America Corporation*  
13 *et al., filed in the United States District Court for the District of*  
14 *Columbia, case number 1:12-cv-00361 RMC, that is in compliance*  
15 *with the relevant terms of the Settlement Term Sheet of that consent*  
16 *judgment with respect to the borrower who brought an action*  
17 *pursuant to this section while the consent judgment is in effect*  
18 *shall have no liability for a violation of Section 2923.55, 2923.6,*  
19 *2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.*

20 *(h) The rights, remedies, and procedures provided by this section*  
21 *are in addition to and independent of any other rights, remedies,*  
22 *or procedures under any other law. Nothing in this section shall*  
23 *be construed to alter, limit, or negate any other rights, remedies,*  
24 *or procedures provided by law.*

25 *(i) A court may award a prevailing borrower reasonable*  
26 *attorney's fees and costs in an action brought pursuant to this*  
27 *section. A borrower shall be deemed to have prevailed for purposes*  
28 *of this subdivision if the borrower obtained injunctive relief or*  
29 *was awarded damages pursuant to this section.*

30 *(j) This section shall not apply to entities described in*  
31 *subdivision (b) of Section 2924.18.*

32 *(k) This section shall remain in effect only until January 1,*  
33 *2018, and as of that date is repealed, unless a later enacted statute,*  
34 *that is enacted before January 1, 2018, deletes or extends that*  
35 *date.*

36 *SEC. 17. Section 2924.12 is added to the Civil Code, to read:*

37 *2924.12. (a) (1) If a trustee's deed upon sale has not been*  
38 *recorded, a borrower may bring an action for injunctive relief to*  
39 *enjoin a material violation of Section 2923.5, 2923.7, 2924.11, or*  
40 *2924.17.*

1     (2) Any injunction shall remain in place and any trustee's sale  
2 shall be enjoined until the court determines that the mortgage  
3 servicer, mortgagee, trustee, beneficiary, or authorized agent has  
4 corrected and remedied the violation or violations giving rise to  
5 the action for injunctive relief. An enjoined entity may move to  
6 dissolve an injunction based on a showing that the material  
7 violation has been corrected and remedied.

8     (b) After a trustee's deed upon sale has been recorded, a  
9 mortgage servicer, mortgagee, trustee, beneficiary, or authorized  
10 agent shall be liable to a borrower for actual economic damages  
11 pursuant to Section 3281, resulting from a material violation of  
12 Section 2923.5, 2923.7, 2924.11, or 2924.17 by that mortgage  
13 servicer, mortgagee, trustee, beneficiary, or authorized agent  
14 where the violation was not corrected and remedied prior to the  
15 recordation of the trustee's deed upon sale. If the court finds that  
16 the material violation was intentional or reckless, or resulted from  
17 willful misconduct by a mortgage servicer, mortgagee, trustee,  
18 beneficiary, or authorized agent, the court may award the borrower  
19 the greater of treble actual damages or statutory damages of fifty  
20 thousand dollars (\$50,000).

21     (c) A mortgage servicer, mortgagee, trustee, beneficiary, or  
22 authorized agent shall not be liable for any violation that it has  
23 corrected and remedied prior to the recordation of the trustee's  
24 deed upon sale, or that has been corrected and remedied by third  
25 parties working on its behalf prior to the recordation of the  
26 trustee's deed upon sale.

27     (d) A violation of Section 2923.5, 2923.7, 2924.11, or 2924.17  
28 by a person licensed by the Department of Corporations,  
29 Department of Financial Institutions, or Department of Real Estate  
30 shall be deemed to be a violation of that person's licensing law.

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

34     (f) A third-party encumbrancer shall not be relieved of liability  
35 resulting from violations of Section 2923.5, 2923.7, 2924.11, or  
36 2924.17 committed by that third-party encumbrancer, that occurred  
37 prior to the sale of the subject property to the bona fide purchaser.

38     (g) The rights, remedies, and procedures provided by this section  
39 are in addition to and independent of any other rights, remedies,  
40 or procedures under any other law. Nothing in this section shall



1 *be construed to alter, limit, or negate any other rights, remedies,*  
2 *or procedures provided by law.*

3 *(h) A court may award a prevailing borrower reasonable*  
4 *attorney's fees and costs in an action brought pursuant to this*  
5 *section. A borrower shall be deemed to have prevailed for purposes*  
6 *of this subdivision if the borrower obtained injunctive relief or*  
7 *was awarded damages pursuant to this section.*

8 *(i) This section shall become operative on January 1, 2018.*

9 *SEC. 18. Section 2924.15 is added to the Civil Code, to read:*

10 *2924.15. (a) Unless otherwise provided, paragraph (5) of*  
11 *subdivision (a) of Section 2924, and Sections 2923.5, 2923.55,*  
12 *2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 shall apply*  
13 *only to first lien mortgages or deeds of trust that are secured by*  
14 *owner-occupied residential real property containing no more than*  
15 *four dwelling units. For these purposes, "owner-occupied" means*  
16 *that the property is the principal residence of the borrower and is*  
17 *security for a loan made for personal, family, or household*  
18 *purposes.*

19 *(b) This section shall remain in effect only until January 1,*  
20 *2018, and as of that date is repealed, unless a later enacted statute,*  
21 *that is enacted before January 1, 2018, deletes or extends that*  
22 *date.*

23 *SEC. 19. Section 2924.15 is added to the Civil Code, to read:*

24 *2924.15. (a) Unless otherwise provided, Sections 2923.5,*  
25 *2923.7, and 2924.11 shall apply only to first lien mortgages or*  
26 *deeds of trust that are secured by owner-occupied residential real*  
27 *property containing no more than four dwelling units. For these*  
28 *purposes, "owner-occupied" means that the property is the*  
29 *principal residence of the borrower and is security for a loan made*  
30 *for personal, family, or household purposes.*

31 *(b) This section shall become operative on January 1, 2018.*

32 *SEC. 20. Section 2924.17 is added to the Civil Code, to read:*

33 *2924.17. (a) A declaration recorded pursuant to Section 2923.5*  
34 *or, until January 1, 2018, pursuant to Section 2923.55, a notice*  
35 *of default, notice of sale, assignment of a deed of trust, or*  
36 *substitution of trustee recorded by or on behalf of a mortgage*  
37 *servicer in connection with a foreclosure subject to the*  
38 *requirements of Section 2924, or a declaration or affidavit filed*  
39 *in any court relative to a foreclosure proceeding shall be accurate*  
40 *and complete and supported by competent and reliable evidence.*

1     (b) Before recording or filing any of the documents described  
2     in subdivision (a), a mortgage servicer shall ensure that it has  
3     reviewed competent and reliable evidence to substantiate the  
4     borrower's default and the right to foreclose, including the  
5     borrower's loan status and loan information.

6     (c) Until January 1, 2018, any mortgage servicer that engages  
7     in multiple and repeated uncorrected violations of subdivision (b)  
8     in recording documents or filing documents in any court relative  
9     to a foreclosure proceeding shall be liable for a civil penalty of  
10    up to seven thousand five hundred dollars (\$7,500) per mortgage  
11    or deed of trust in an action brought by a government entity  
12    identified in Section 17204 of the Business and Professions Code,  
13    or in an administrative proceeding brought by the Department of  
14    Corporations, the Department of Real Estate, or the Department  
15    of Financial Institutions against a respective licensee, in addition  
16    to any other remedies available to these entities. This subdivision  
17    shall be inoperative on January 1, 2018.

18    SEC. 21. Section 2924.18 is added to the Civil Code, to read:

19    2924.18. (a) (1) If a borrower submits a complete application  
20    for a first lien loan modification offered by, or through, the  
21    borrower's mortgage servicer, a mortgage servicer, trustee,  
22    mortgagee, beneficiary, or authorized agent shall not record a  
23    notice of default, notice of sale, or conduct a trustee's sale while  
24    the complete first lien loan modification application is pending,  
25    and until the borrower has been provided with a written  
26    determination by the mortgage servicer regarding that borrower's  
27    eligibility for the requested loan modification.

28    (2) If a foreclosure prevention alternative has been approved  
29    in writing prior to the recordation of a notice of default, a  
30    mortgage servicer, mortgagee, trustee, beneficiary, or authorized  
31    agent shall not record a notice of default under either of the  
32    following circumstances:

33    (A) The borrower is in compliance with the terms of a written  
34    trial or permanent loan modification, forbearance, or repayment  
35    plan.

36    (B) A foreclosure prevention alternative has been approved in  
37    writing by all parties, including, for example, the first lien investor,  
38    junior lienholder, and mortgage insurer, as applicable, and proof  
39    of funds or financing has been provided to the servicer.

1     (3) *If a foreclosure prevention alternative is approved in writing*  
2 *after the recordation of a notice of default, a mortgage servicer,*  
3 *mortgagee, trustee, beneficiary, or authorized agent shall not*  
4 *record a notice of sale or conduct a trustee's sale under either of*  
5 *the following circumstances:*

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

9     (B) *A foreclosure prevention alternative has been approved in*  
10 *writing by all parties, including, for example, the first lien investor,*  
11 *junior lienholder, and mortgage insurer, as applicable, and proof*  
12 *of funds or financing has been provided to the servicer.*

13     (b) *This section shall apply only to a depository institution*  
14 *chartered under state or federal law, a person licensed pursuant*  
15 *to Division 9 (commencing with Section 22000) or Division 20*  
16 *(commencing with Section 50000) of the Financial Code, or a*  
17 *person licensed pursuant to Part 1 (commencing with Section*  
18 *10000) of Division 4 of the Business and Professions Code, that,*  
19 *during its immediately preceding annual reporting period, as*  
20 *established with its primary regulator, foreclosed on 175 or fewer*  
21 *residential real properties, containing no more than four dwelling*  
22 *units, that are located in California.*

23     (c) *Within three months after the close of any calendar year or*  
24 *annual reporting period as established with its primary regulator*  
25 *during which an entity or person described in subdivision (b)*  
26 *exceeds the threshold of 175 specified in subdivision (b), that entity*  
27 *shall notify its primary regulator, in a manner acceptable to its*  
28 *primary regulator, and any mortgagor or trustor who is delinquent*  
29 *on a residential mortgage loan serviced by that entity of the date*  
30 *on which that entity will be subject to Sections 2923.55, 2923.6,*  
31 *2923.7, 2924.9, 2924.10, 2924.11, and 2924.12, which date shall*  
32 *be the first day of the first month that is six months after the close*  
33 *of the calendar year or annual reporting period during which that*  
34 *entity exceeded the threshold.*

35     (d) *For purposes of this section, an application shall be deemed*  
36 *"complete" when a borrower has supplied the mortgage servicer*  
37 *with all documents required by the mortgage servicer within the*  
38 *reasonable timeframes specified by the mortgage servicer.*

39     (e) *If a borrower has been approved in writing for a first lien*  
40 *loan modification or other foreclosure prevention alternative, and*

1 *the servicing of the borrower's loan is transferred or sold to*  
2 *another mortgage servicer, the subsequent mortgage servicer shall*  
3 *continue to honor any previously approved first lien loan*  
4 *modification or other foreclosure prevention alternative, in*  
5 *accordance with the provisions of the act that added this section.*

6 *(f) This section shall apply only to mortgages or deeds of trust*  
7 *described in Section 2924.15.*

8 *(g) This section shall remain in effect only until January 1,*  
9 *2018, and as of that date is repealed, unless a later enacted statute,*  
10 *that is enacted before January 1, 2018, deletes or extends that*  
11 *date.*

12 *SEC. 22. Section 2924.19 is added to the Civil Code, to read:*

13 *2924.19. (a) (1) If a trustee's deed upon sale has not been*  
14 *recorded, a borrower may bring an action for injunctive relief to*  
15 *enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.*

16 *(2) Any injunction shall remain in place and any trustee's sale*  
17 *shall be enjoined until the court determines that the mortgage*  
18 *servicer, mortgagee, beneficiary, or authorized agent has corrected*  
19 *and remedied the violation or violations giving rise to the action*  
20 *for injunctive relief. An enjoined entity may move to dissolve an*  
21 *injunction based on a showing that the material violation has been*  
22 *corrected and remedied.*

23 *(b) After a trustee's deed upon sale has been recorded, a*  
24 *mortgage servicer, mortgagee, beneficiary, or authorized agent*  
25 *shall be liable to a borrower for actual economic damages*  
26 *pursuant to Section 3281, resulting from a material violation of*  
27 *Section 2923.5, 2924.17, or 2924.18 by that mortgage servicer,*  
28 *mortgagee, beneficiary, or authorized agent where the violation*  
29 *was not corrected and remedied prior to the recordation of the*  
30 *trustee's deed upon sale. If the court finds that the material*  
31 *violation was intentional or reckless, or resulted from willful*  
32 *misconduct by a mortgage servicer, mortgagee, beneficiary, or*  
33 *authorized agent, the court may award the borrower the greater*  
34 *of treble actual damages or statutory damages of fifty thousand*  
35 *dollars (\$50,000).*

36 *(c) A mortgage servicer, mortgagee, beneficiary, or authorized*  
37 *agent shall not be liable for any violation that it has corrected and*  
38 *remedied prior to the recordation of the trustee's deed upon sale,*  
39 *or that has been corrected and remedied by third parties working*

1 *on its behalf prior to the recordation of the trustee's deed upon*  
2 *sale.*

3 *(d) A violation of Section 2923.5, 2924.17, or 2917.18 by a*  
4 *person licensed by the Department of Corporations, the*  
5 *Department of Financial Institutions, or the Department of Real*  
6 *Estate shall be deemed to be a violation of that person's licensing*  
7 *law.*

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

11 *(f) A third-party encumbrancer shall not be relieved of liability*  
12 *resulting from violations of Section 2923.5, 2924.17 or 2924.18,*  
13 *committed by that third-party encumbrancer, that occurred prior*  
14 *to the sale of the subject property to the bona fide purchaser.*

15 *(g) The rights, remedies, and procedures provided by this section*  
16 *are in addition to and independent of any other rights, remedies,*  
17 *or procedures under any other law. Nothing in this section shall*  
18 *be construed to alter, limit, or negate any other rights, remedies,*  
19 *or procedures provided by law.*

20 *(h) A court may award a prevailing borrower reasonable*  
21 *attorney's fees and costs in an action brought pursuant to this*  
22 *section. A borrower shall be deemed to have prevailed for purposes*  
23 *of this subdivision if the borrower obtained injunctive relief or*  
24 *damages pursuant to this section.*

25 *(i) This section shall apply only to entities described in*  
26 *subdivision (b) of Section 2924.18.*

27 *(j) This section shall remain in effect only until January 1,*  
28 *2018, and as of that date is repealed, unless a later enacted statute,*  
29 *that is enacted before January 1, 2018, deletes or extends that*  
30 *date.*

31 *SEC. 23. Section 2924.20 is added to the Civil Code, to read:*

32 *2924.20. Consistent with their general regulatory authority,*  
33 *and notwithstanding subdivisions (b) and (c) of Section 2924.18,*  
34 *the Department of Corporations, the Department of Financial*  
35 *Institutions, and the Department of Real Estate may adopt*  
36 *regulations applicable to any entity or person under their*  
37 *respective jurisdictions that are necessary to carry out the purposes*  
38 *of the act that added this section. A violation of the regulations*  
39 *adopted pursuant to this section shall only be enforceable by the*  
40 *regulatory agency.*

1     *SEC. 24. The provisions of this act are severable. If any*  
2     *provision of this act or its application is held invalid, that invalidity*  
3     *shall not affect other provisions or applications that can be given*  
4     *effect without the invalid provision or application.*

5     *SEC. 25. No reimbursement is required by this act pursuant*  
6     *to Section 6 of Article XIII B of the California Constitution because*  
7     *the only costs that may be incurred by a local agency or school*  
8     *district will be incurred because this act creates a new crime or*  
9     *infraction, eliminates a crime or infraction, or changes the penalty*  
10    *for a crime or infraction, within the meaning of Section 17556 of*  
11    *the Government Code, or changes the definition of a crime within*  
12    *the meaning of Section 6 of Article XIII B of the California*  
13    *Constitution.*

14    ~~SECTION 1. Section 10080.9 is added to the Business and~~  
15    ~~Professions Code, to read:~~

16    ~~10080.9. (a) If, upon inspection, examination, or investigation,~~  
17    ~~the commissioner has cause to believe that a person who does not~~  
18    ~~possess a real estate license is engaged or has engaged in activities~~  
19    ~~for which a real estate license is required, or that a licensee is~~  
20    ~~violating or has violated any provision of this division or any rule~~  
21    ~~or order thereunder, the commissioner or his or her designated~~  
22    ~~representative may issue a citation to that person in writing,~~  
23    ~~describing with particularity the basis of the citation. Each citation~~  
24    ~~may contain an order to correct the violation or violations identified~~  
25    ~~and a reasonable time period or periods by which the violation or~~  
26    ~~violations must be corrected. In addition, each citation may assess~~  
27    ~~an administrative fine not to exceed two thousand five hundred~~  
28    ~~dollars (\$2,500), which shall be deposited into the Recovery~~  
29    ~~Account of the Real Estate Fund and shall, upon appropriation by~~  
30    ~~the Legislature, be available for expenditure for the purposes~~  
31    ~~specified in Chapter 6.5 (commencing with Section 10470). In~~  
32    ~~assessing a fine, the commissioner shall give due consideration to~~  
33    ~~the appropriateness of the amount of the fine with respect to factors~~  
34    ~~such as the gravity of the violation, the good faith of the person~~  
35    ~~cited, and the history of previous violations. A citation issued and~~  
36    ~~a fine assessed against and paid by a licensee pursuant to this~~  
37    ~~section shall be in lieu of other administrative discipline by the~~  
38    ~~commissioner for the offense or offenses cited.~~

39    ~~(b) Notwithstanding subdivision (a), nothing in this section shall~~  
40    ~~prevent the commissioner from issuing an order to desist and~~

1 ~~refrain from engaging in a specific business activity or activities~~  
2 ~~or an order to suspend all business operations to a person who is~~  
3 ~~engaged in or has engaged in continued or repeated violations of~~  
4 ~~this part. In any of these circumstances, the sanctions authorized~~  
5 ~~under this section shall be separate from, and in addition to, all~~  
6 ~~other administrative, civil, or criminal penalties.~~

7 ~~(e) If, within 30 days from the receipt of the citation or the~~  
8 ~~citation and fine, the person cited fails to notify the commissioner~~  
9 ~~that he or she intends to request a hearing as described in~~  
10 ~~subdivision (d), the citation or the citation and fine shall be deemed~~  
11 ~~final. If a hearing is not requested pursuant to this section, the~~  
12 ~~citation and any fine assessed and paid thereunder, while~~  
13 ~~constituting discipline for a violation of this division or a rule or~~  
14 ~~order thereunder, shall not be reported as disciplinary action taken~~  
15 ~~by the department.~~

16 ~~(d) Any hearing under this section shall be conducted in~~  
17 ~~accordance with Chapter 5 (commencing with Section 11500) of~~  
18 ~~Part 1 of Division 3 of Title 2 of the Government Code.~~

19 ~~(e) After the exhaustion of the review procedures provided for~~  
20 ~~in this section, the commissioner may apply to the appropriate~~  
21 ~~superior court for a judgment in the amount of any administrative~~  
22 ~~penalty imposed pursuant to subdivision (a) and an order~~  
23 ~~compelling the cited person to comply with the order of the~~  
24 ~~commissioner. The application, which shall include a certified~~  
25 ~~copy of the final order of the commissioner, shall constitute a~~  
26 ~~sufficient showing to warrant the issuance of the judgment and~~  
27 ~~order.~~

28 ~~(f) Failure of any person to comply with the terms of a citation~~  
29 ~~or pay a fine assessed pursuant to this section, within a reasonable~~  
30 ~~period specified by the commissioner, shall subject that person to~~  
31 ~~disciplinary action by the commissioner. In no event may a license~~  
32 ~~be renewed if an unpaid fine remains outstanding or the terms of~~  
33 ~~a citation have not been complied with.~~

1		_____
2	CORRECTIONS:	
3	Digest—Pages 1, 2, 3, and 4.	
4	Text—8, 11, 14, and 20.	
5		_____

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