

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 729

Introduced by Senators Leno and Steinberg

(Principal coauthor: Assembly Member Feuer)

(Coauthors: Senators DeSaulnier, Hancock, Liu, and Wolk)

(Coauthors: Assembly Members Davis, Dickinson, and Monning)

February 18, 2011

An act to amend ~~Sections 2923.5 and 2924b~~ and add Section 2923.5 of, to ~~amend and repeal Section 2924 of,~~ and to add Sections 2920.5, 2923.4, ~~2923.5,~~ 2923.7, 2923.73, 2923.74, and 2923.75 to, and to repeal *Section 2924 of*, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

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

Existing

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

This bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from recording a notice of default unless that party

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

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

for a false declaration of a lost note representing a mortgage or deed of trust. The bill would provide that any person licensed by the State of California who violates the bill’s provisions is deemed to have violated ~~that person’s~~ *the* licensing law. ~~The bill would require certain information to be recorded with a notice of default and to be provided with the notice of default sent to a borrower applicable to that person. Because the violation of certain licensing laws, including those regulating mortgage services, are punishable as crimes, this bill would impose a state-mandated local program. The bill would also delete duplicative provisions of law.~~

(2) *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.

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. Section 2920.5 is added to the Civil Code, to read:
 2 2920.5. For purposes of this article, “mortgage servicer”
 3 means a person or entity responsible for the day-to-day
 4 management of a mortgage loan account, including collecting and
 5 crediting periodic loan payments, handling any escrow account,
 6 or enforcing mortgage loan terms either as the holder of the loan
 7 note or on behalf of the holder of the loan note.

8 ~~SECTION 1.~~

9 SEC. 2. Section 2923.4 is added to the Civil Code, to read:

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

1 ~~SEC. 2.~~

2 SEC. 3. Section 2923.5 of the Civil Code is amended to read:

3 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
4 agent shall not record a notice of default pursuant to Section 2924
5 until 30 days after initial contact is made as required by paragraph
6 (2) or 30 days after satisfying the due diligence requirements as
7 described in subdivision (g), and until the requirements of Section
8 2923.7, if applicable, have been satisfied.

9 (2) A mortgagee, beneficiary, or authorized agent shall contact
10 the borrower in person or by telephone in order to assess the
11 borrower’s financial situation and explore options for the borrower
12 to avoid foreclosure. During the initial contact, the mortgagee,
13 beneficiary, or authorized agent shall advise the borrower that he
14 or she has the right to request a subsequent meeting and, if
15 requested, the mortgagee, beneficiary, or authorized agent shall
16 schedule the meeting to occur within 14 days. The assessment of
17 the borrower’s financial situation and discussion of options may
18 occur during the first contact, or at the subsequent meeting
19 scheduled for that purpose. In either case, the borrower shall be
20 provided the toll-free telephone number made available by the
21 United States Department of Housing and Urban Development
22 (HUD) to find a HUD-certified housing counseling agency, and,
23 if applicable, a deadline for the borrower to submit an initial
24 application for a loan modification and receive the associated
25 protections of state law, which shall be at least 45 days after the
26 date ~~the~~ *of the* initial telephonic or in-person contact. Any
27 meeting may occur telephonically.

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

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

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

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

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

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

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

16 (g) Subject to the requirements of Section 2923.7, a notice of
17 default may be recorded pursuant to Section 2924 when a
18 mortgagee, beneficiary, or authorized agent has not contacted a
19 borrower as required by paragraph (2) of subdivision (a) provided
20 that the failure to contact the borrower occurred despite the due
21 diligence of the mortgagee, beneficiary, or authorized agent. For
22 purposes of this section, "due diligence" shall require and mean
23 all of the following:

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

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

29 (B) If applicable, a deadline for the borrower to submit an initial
30 application for a loan modification and receive the associated
31 protections of state law, which shall be at least 45 days after the
32 date of this letter or 45 days after the date the mortgagee,
33 beneficiary, or authorized agent made initial contact with the
34 borrower pursuant to paragraph (2) of subdivision (a) of Section
35 2923.5, whichever is earlier.

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

1 (B) A mortgagee, beneficiary, or authorized agent may attempt
2 to contact a borrower using an automated system to dial borrowers,
3 provided that, if the telephone call is answered, the call is
4 connected to a live representative of the mortgagee, beneficiary,
5 or authorized agent.

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

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

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

17 (B) If applicable, a deadline for the borrower to submit an initial
18 application for a loan modification and receive the associated
19 protections of state law, which shall be at least 45 days after the
20 date of the letter described in paragraph (1) of subdivision (g) or
21 45 days after the date the mortgagee, beneficiary, or authorized
22 agent made initial contact with the borrower pursuant to paragraph
23 (2) of subdivision (a) of Section 2923.5, whichever is earlier.

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

28 (5) The mortgagee, beneficiary, or authorized agent has posted
29 a prominent link on the homepage of its Internet Web site, if any,
30 to the following 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 mortgagee, beneficiary, or authorized
37 agent when discussing options for avoiding foreclosure.

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

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

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

5 (1) The borrower has surrendered the property as evidenced by
6 either a letter confirming the surrender or delivery of the keys to
7 the property to the mortgagee, trustee, beneficiary, or authorized
8 agent.

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

14 (3) A case has been filed by the borrower under Chapter 7, 11,
15 12, or 13 of Title 11 of the United States Code and the bankruptcy
16 court has not entered an order closing or dismissing the bankruptcy
17 case, or granting relief from a stay of foreclosure.

18 (i) This section shall apply only to mortgages or deeds of trust
19 recorded from January 1, 2003, to December 31, 2007, inclusive,
20 that are secured by owner-occupied residential real property
21 containing no more than four dwelling units. For purposes of this
22 subdivision, “owner-occupied” means that the residence is the
23 principal residence of the borrower as indicated to the lender in
24 loan documents.

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

28 ~~SEC. 3.~~

29 *SEC. 4.* Section 2923.5 is added to the Civil Code, to read:

30 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
31 agent shall not record a notice of default pursuant to Section 2924
32 until either 46 days after contacting the borrower in writing as
33 required by paragraph (2) or until the requirements of Section
34 2923.7 have been satisfied, whichever is later.

35 (2) Prior to recording a notice of default pursuant to Section
36 2924, a mortgagee, trustee, beneficiary, or authorized agent shall
37 send the borrower a certified letter, with return receipt requested,
38 that includes the toll-free telephone number made available by
39 HUD to find a HUD-certified housing counseling agency; and, if
40 applicable, a description of the options that may be available to

1 the borrower if he or she wishes to avoid foreclosure, and
2 instructions setting forth the steps to take to pursue those options,
3 including, if applicable, a deadline for the borrower to submit an
4 initial application for a loan modification and receive the associated
5 protections of state law, which shall be at least 45 days after the
6 date the letter is received.

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

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

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

16 (A) Information about any available options for avoiding
17 foreclosure.

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

21 (C) Contact information for borrowers who wish to discuss
22 options for avoiding foreclosure with their mortgagee, beneficiary,
23 or authorized agent.

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

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

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

33 ~~SEC. 4.~~

34 *SEC. 5.* Section 2923.7 is added to the Civil Code, to read:

35 2923.7. (a) If an eligible borrower ~~initiates~~ *requests* a loan
36 ~~modification application~~ *modification, either orally or in writing,*
37 on or before the 90th day of delinquency on the mortgage loan at
38 issue or the 45th day after the mortgagee, trustee, or beneficiary
39 or authorized agent makes initial contact with the borrower
40 pursuant to Section 2923.5, whichever is later, the mortgagee,

1 trustee, or beneficiary shall not record a notice of default unless
2 and until it has, in good faith, reviewed the application, rendered
3 a decision on the application, and sent the borrower a denial
4 explanation letter as described in Section 2923.73.

5 (b) If a borrower ~~initiates an application for~~ *requests* a loan
6 modification, *either orally or in writing*, by the deadline described
7 in subdivision (a), but does not ~~include initially submit~~ all of the
8 documentation or information the mortgagee, beneficiary, or
9 authorized agent requires in order to consider the borrower for a
10 loan modification, the mortgagee, beneficiary, or authorized agent
11 shall provide the borrower with a written notice that lists any
12 supplemental documentation or information required, and includes
13 the deadline for providing that documentation or information,
14 which shall not be less than 30 calendar days from the date the
15 borrower receives the notice.

16 ~~(e) If an eligible borrower initiates a loan modification~~
17 ~~application by 30~~

18 (c) (1) *If a borrower requests a loan modification, either orally*
19 *or in writing, within 15 days after receiving the statutorily required*
20 *copy of the notice of default by certified mail, and submits a*
21 *complete loan modification application by the later of either (A)*
22 *15 days after receiving application instructions from the mortgage*
23 *servicer, or (B) any application deadline communicated in writing*
24 *by the mortgage servicer, the mortgagee, trustee, ~~or beneficiary~~*
25 *beneficiary, or authorized agent shall not record a notice of sale*
26 *until at least 10 business days after it has, in good faith, reviewed*
27 *the application, rendered a decision on the application, and sent*
28 *the borrower a denial explanation letter as described in Section*
29 *2923.73.*

30 (2) *This subdivision shall not apply if a borrower applied for a*
31 *loan modification before the notice of default was recorded, and*
32 *the mortgagee, trustee, beneficiary, or authorized agent satisfied*
33 *the requirements of Sections 2923.73 and 2924.74.*

34 (d) ~~If the mortgagee, beneficiary, or authorized agent mortgage~~
35 *servicer has signed a Making Home Affordable Servicer*
36 *Participation Agreement with the Federal National Mortgage*
37 *Association or is otherwise required to review the borrower's loan*
38 *under the federal Making Home Affordable Modification Program*
39 *(HAMP) guidelines, compliance with applicable HAMP rules*
40 *regarding deadlines and timeframes for the borrower to submit*

1 and complete a loan modification application shall satisfy the
2 requirements of this section *while HAMP remains in effect*.

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

7 (f) This section shall not apply if ~~any~~ *either* of the following
8 occurs:

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

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

15 ~~(3) The borrower is not eligible to be considered for a loan
16 modification.~~

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

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

29 ~~SEC. 5.~~

30 *SEC. 6.* Section 2923.73 is added to the Civil Code, to read:

31 2923.73. (a) If a borrower ~~initiates an application for a loan
32 modification according to the procedures of the mortgagee,
33 beneficiary, or authorized agent, and the mortgagee, beneficiary,
34 or authorized agent denies who requests a loan modification, either
35 orally or in writing, is denied~~ either a permanent loan modification
36 or a federal Making Home Affordable Modification Program
37 (HAMP) trial period plan, the mortgagee, beneficiary, or authorized
38 agent shall send the borrower by certified mail, no later than 10
39 business days following the denial decision, a denial explanation
40 letter that states the reason or reasons for the denial *in English or,*

1 *if communications with the borrower have been primarily in one*
2 *of the languages set forth in subdivision (b) of Section 1632, then*
3 *in that language.*

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

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

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

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

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

32 (D) ~~All of the~~ *The reason or reasons* the borrower did not qualify
33 for a loan modification, including, as applicable, the following:

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

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

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

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

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

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

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

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

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

1 ~~SEC. 6.~~

2 *SEC. 7.* Section 2923.74 is added to the Civil Code, to read:

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

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

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

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

30

31 **DECLARATION OF COMPLIANCE**

32 **I. BORROWER CONTACT**

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

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

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

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

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

1 B. This loan is subject to Cal. Civil Code Sec. 2923.5, and the
 2 mortgagee, beneficiary, or authorized agent has complied with the
 3 requirements of Cal. Civil Code Sec. 2923.5 by satisfying the
 4 applicable contact or due diligence requirements described in Cal.
 5 Civil Code Sec. 2923.5(a) or (g). If checked, insert the date that
 6 the applicable borrower contact requirements were completed here:

7 _____
 8 [~~Complete Sections C and D~~ Section C beginning on January 1,
 9 2013 only].

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

12 ~~Cal. Civil Code Sec. 2923.5(d)~~. *pursuant to Cal. Civil Code*
 13 *Sec. 2923.5(d)*.

14 This loan is subject to Cal. Civil Code Sec. 2923.5, and the
 15 mortgagee, beneficiary, or authorized agent has complied with the
 16 requirements of Cal. Civil Code Sec. 2923.5(a)(2) and 2923.5(c).
 17 If checked, insert the date that the certified letter required by Sec.
 18 2923.5(a)(2) was sent here: _____

19 II. FORECLOSURE AVOIDANCE REVIEW

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

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

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

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

25 If item (II)(A) is checked, no further information regarding
 26 borrower solicitation efforts is required. If item (II)(A) is not
 27 checked, complete item (II)(B).

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

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

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

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

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

3 The borrower was offered a permanent loan modification, but
4 the borrower did not accept the modification offered.

5 The borrower was offered and accepted a permanent loan
6 modification, but did not comply with the terms of the
7 modification.

8 The borrower communicated to the mortgagee, beneficiary,
9 or authorized agent that he or she does not intend to apply for a
10 loan modification.

11 **III. PROOF OF OWNERSHIP**

12 Attached is a copy of the note and all assignments and
13 endorsements of the note, along with a declaration attesting to the
14 existence and possession of the original note as well as all the
15 assignments and endorsements, and certifying ownership of the
16 mortgage and the right to foreclose.

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

22

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

29 ~~(e) For purposes of this section, “mortgage servicer” shall mean~~
30 ~~a person or entity responsible for the day-to-day management of~~
31 ~~a mortgage loan account, including collecting and crediting~~
32 ~~periodic loan payments, handling any escrow account or enforcing~~
33 ~~mortgage loan terms either as the holder of the loan note or on~~
34 ~~behalf of holder of the loan note.~~

35 ~~SEC. 7.~~

36 ~~SEC. 8. Section 2923.75 is added to the Civil Code, to read:~~

37 ~~2923.75.—(a) If a borrower is eligible to apply for a loan~~
38 ~~modification and the mortgagee, trustee, beneficiary, or authorized~~
39 ~~agent records a notice of sale without completing its evaluation of~~
40 ~~the borrower’s timely completed loan modification application or~~

1 ~~waiting for the borrower's deadline for submitting a loan~~
2 ~~modification application to pass or fails to send a denial explanation~~
3 ~~letter that materially complies with the requirements of Section~~
4 ~~2923.73, the borrower may seek an order in any court having~~
5 ~~jurisdiction to enjoin any pending trustee's sale until any of these~~
6 ~~requirements not previously satisfied are satisfied.~~

7 *2923.75. (a) If the mortgagee, trustee, beneficiary, or*
8 *authorized agent records a notice of sale without satisfying any*
9 *of the following requirements, the borrower may seek an order in*
10 *any court having jurisdiction to enjoin any pending trustee's sale*
11 *until the mortgagee, trustee, beneficiary, or authorized agent has*
12 *performed all of the following, as applicable:*

13 *(1) Waited for the borrower's deadlines for requesting and*
14 *applying for a loan modification to pass pursuant to Section*
15 *2923.7.*

16 *(2) Completed the evaluation of the borrower's timely completed*
17 *loan modification application pursuant to Section 2923.7.*

18 *(3) Sent the borrower a denial explanation letter that materially*
19 *complies with the requirements of Section 2923.73.*

20 ~~(b) If a borrower is eligible to apply for a loan modification and~~
21 ~~the mortgagee, trustee, beneficiary, or authorized agent either~~
22 ~~records a notice of default without completing its evaluation of~~
23 ~~the borrower's timely completed loan modification application or~~
24 ~~without waiting for the borrower's deadline for submitting a loan~~
25 ~~modification application to pass; denies a loan modification~~
26 ~~application for failure to provide required verification documents~~
27 ~~or information after failing to provide the borrower with a deadline~~
28 ~~that complies with subdivision (b) of Section 2923.7 or after failing~~
29 ~~to honor that deadline; or fails to send a denial explanation letter~~
30 ~~application, waiting for the borrower's deadlines for requesting~~
31 ~~and applying for a loan modification to pass as required by Section~~
32 ~~2923.7, or sending the borrower a denial explanation letter that~~
33 ~~materially complies with the requirements of Section 2923.73, and~~
34 ~~the mortgagee, trustee, beneficiary, or authorized agent causes the~~
35 ~~property at issue to be sold at a trustee's sale, the borrower may~~
36 ~~pursue any one of the following options within one year following~~
37 ~~the trustee's sale, as applicable, against the mortgagee, trustee,~~
38 ~~beneficiary, or authorized agent: options, as applicable, against~~
39 ~~the beneficiary or mortgage servicer, within one year following~~
40 ~~the trustee's sale:~~

1 (1) If the property at issue is sold to a bona fide purchaser at a
2 ~~trustee trustee's~~ sale conducted in accordance with Section 2924f,
3 the borrower may recover the greater of treble actual damages or
4 statutory damages in the amount of fifteen thousand dollars
5 (\$15,000), plus reasonable attorney's fees and costs.

6 (2) If, prior to the initiation of an action under this section, the
7 property at issue is sold to a bona fide purchaser by the foreclosing
8 party subsequent to a trustee sale conducted in accordance with
9 Section 2924f in which title was transferred to the foreclosing
10 party, the borrower may recover the greater of treble actual
11 damages or statutory damages in the amount of fifteen thousand
12 dollars (\$15,000), plus reasonable attorney's fees and costs. If the
13 mortgagee, trustee, beneficiary, or authorized agent had actual
14 notice of the borrower's claim under this section prior to selling
15 the property to a bona fide purchaser, the borrower shall *also* be
16 entitled to recover statutory damages in the amount of twenty
17 thousand dollars (\$20,000), in addition to other damages
18 recoverable under this paragraph, ~~plus reasonable attorney's fees~~
19 ~~and costs.~~

20 (3) ~~(A)~~ If title to the property at issue is transferred to the
21 foreclosing party at a trustee sale conducted in accordance with
22 Section 2924f, ~~but a~~ *and there has been no* subsequent sale to a
23 bona fide purchaser, ~~as described in paragraph (2), has not~~
24 ~~occurred~~, the borrower may bring an action to void the foreclosure
25 sale, ~~for an award of attorney's fees and costs, and to obtain an~~
26 ~~injunction of the type described in subparagraph (B):~~ *to enjoin the*
27 *recording of any further notice of sale until at least 30 days after*
28 *any requirement of Section 2923.5, 2923.7, 2923.73, or 2923.74*
29 *not previously satisfied is satisfied, and for reasonable attorney's*
30 *fees and costs.*

31 ~~(B)~~ Pursuant to ~~subparagraph (A), a borrower may seek an~~
32 ~~injunction requiring the mortgagee, trustee, beneficiary, or~~
33 ~~authorized agent to comply, at least 30 days prior to recording a~~
34 ~~notice of sale, with any requirement, not previously satisfied, of~~
35 ~~Section 2923.5, 2923.7, 2923.73, or 2923.74, or any similar~~
36 ~~requirement that the court deems appropriate in the interest of~~
37 ~~justice. The injunction shall also require the mortgagee, trustee,~~
38 ~~beneficiary, or authorized agent to file a declaration affirming~~
39 ~~compliance with the requirements of the injunction together with~~
40 ~~the notice of sale.~~

1 (c) A ~~mortgagee, trustee, beneficiary, or authorized agent~~
2 *beneficiary or mortgage servicer* shall have no civil liability under
3 subdivision (b) if, prior to the initiation of a legal action by the
4 borrower, ~~it the mortgagee, trustee, beneficiary, or authorized~~
5 *agent* satisfies the requirements of either of the following
6 paragraphs no later than 180 days after the date of the ~~trustee~~
7 *trustee's* sale:

8 (1) ~~The mortgagee, trustee, beneficiary, or authorized agent do~~
9 ~~all of the following:~~

10 (A)

11 (1) (A) ~~Voluntarily rescind~~ *rescinds* the foreclosure sale prior
12 to filing an unlawful detainer action against the borrower.

13 (B) ~~Within three days of the rescission, send~~ *sends* the borrower
14 a written communication informing the borrower of the rescission
15 and listing the steps the ~~mortgagee, trustee, beneficiary, or~~
16 ~~authorized agent will take prior to filing a~~ *beneficiary or mortgage*
17 *servicer will take prior to recording any further* notice of sale.

18 (C) ~~Materially comply~~ *complies* with all the requirements of
19 Section 2923.5, 2923.7, 2923.73, or 2923.74, as applicable, that
20 were not ~~previously satisfied, and either offer the borrower a loan~~
21 ~~modification if the borrower qualifies for one, or send the borrower~~
22 ~~a written communication informing the borrower of the steps that~~
23 ~~were taken and the outcome, including any reason for the denial~~
24 ~~of a loan modification, if applicable, at least 30 days before~~
25 ~~previously satisfied, at least 30 days before recording a any further~~
26 ~~notice of sale.~~

27 (2) ~~The mortgagee, trustee, beneficiary, or authorized agent~~
28 ~~shall refrain from filing an unlawful detainer action against the~~
29 ~~borrower until both of the following requirements have been~~
30 ~~satisfied:~~

31 (A) ~~Prior to taking any steps under subparagraph (B), the~~
32 ~~mortgagee, trustee, beneficiary, or authorized agent shall send the~~
33 ~~borrower a written communication informing the borrower that it~~
34 ~~will not proceed with an eviction until it has completed certain~~
35 ~~steps, as set forth in the letter.~~

36 (B) ~~The mortgagee, trustee, beneficiary, or authorized agent~~
37 ~~shall materially comply with all of the requirements of Sections~~
38 ~~2923.5, 2923.7, 2923.73, and 2923.74, as applicable, that were not~~
39 ~~previously satisfied, and send the borrower a written~~
40 ~~communication informing the borrower of the steps that were taken~~

1 and the outcome, including any reason for the denial of a loan
2 modification, if applicable. The mortgagee, trustee, beneficiary,
3 or authorized agent shall wait 30 days after completing those
4 requirements before filing an unlawful detainer action against the
5 borrower. However, if the mortgagee, trustee, beneficiary, or
6 authorized agent determines that the borrower qualifies for a loan
7 modification, it shall rescind the sale and offer the borrower the
8 loan modification.

9 (2) (A) *Sends the borrower a written communication stating*
10 *that the beneficiary or mortgage servicer will not file an unlawful*
11 *detainer action against the borrower before completing certain*
12 *steps, as set forth in the letter.*

13 (B) *Refrains from filing an unlawful detainer action against the*
14 *borrower until at least 30 days after the beneficiary or mortgage*
15 *servicer has materially complied with all of the applicable*
16 *requirements of Sections 2923.5, 2923.7, 2923.73, and 2923.74*
17 *that were not previously satisfied, and sent the borrower a written*
18 *communication describing the steps that were taken and the*
19 *outcome, including any reason for the denial of a loan*
20 *modification, if applicable. If the beneficiary or mortgage servicer*
21 *determines that the borrower qualifies for a loan modification, it*
22 *shall rescind the sale and offer the borrower a loan modification.*

23 (d) (1) ~~If the mortgagee, trustee, beneficiary, or authorized~~
24 ~~agent fails to record mortgage servicer fails to record, or have~~
25 ~~recorded on its behalf,~~ a completed declaration of compliance
26 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
27 of Section 2923.74, a borrower may recover statutory damages of
28 up to ten thousand dollars (\$10,000), but not less than one thousand
29 five hundred dollars (\$1,500), ~~from the mortgagee, trustee,~~
30 ~~beneficiary, or authorized agent~~ *plus attorney's fees and costs,*
31 *from the mortgage servicer.*

32 (2) ~~If the mortgagee, trustee, beneficiary, or authorized agent~~
33 ~~submits mortgage servicer records, or has recorded on its behalf,~~
34 a materially false declaration of compliance, including any
35 declaration of lost note, a borrower may recover statutory damages
36 of up to twenty-five thousand dollars (\$25,000), but not less than
37 ten thousand dollars (\$10,000), ~~from the mortgagee, trustee,~~
38 ~~beneficiary, or authorized agent,~~ plus attorney's fees and costs,
39 *from the mortgage servicer.*

1 (3) For purposes of this subdivision, the declaration of
2 compliance shall not be considered false if it lists any incorrect
3 dates for the date that the requirements described in the declaration
4 were completed, unless the mortgagee, beneficiary, or authorized
5 agent *mortgage servicer* knowingly included the wrong date on
6 the declaration.

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

10 (2) Failure to complete any required section of the declaration
11 of compliance shall not be considered a technical or de ~~minimus~~
12 *minimis error*.

13 (f) (1) The provisions of Section 2923.5, 2923.7, 2923.73,
14 2923.74, 2924, or 2924b are also enforceable by the Attorney
15 General. Any person, including a partner or officer of the
16 mortgagee, trustee, beneficiary, or authorized agent, who violates
17 any provision of this act, shall be subject to a civil penalty of not
18 more than ten thousand dollars (\$10,000) for each violation, except
19 as stated in paragraph (2).

20 (2) (A) Any trustee, beneficiary, or authorized agent that
21 ~~submits records, or has recorded on its behalf,~~ a false or fraudulent
22 declaration of lost note pursuant to subparagraph (D) of paragraph
23 (1) of subdivision (a) of Section 2924 shall be subject to a civil
24 penalty of twenty-five thousand dollars (\$25,000) for each
25 violation.

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

33 (3) The Attorney General may also bring a civil action for
34 injunctive relief, and may include in the action a claim for
35 restitution, disgorgement, or damages on behalf of ~~the affected~~
36 ~~consumers subject to the act or practice constituting the subject~~
37 ~~matter of the action.~~ The Attorney General may include in any
38 action authorized by this section, a claim for costs, including
39 reasonable attorney's fees and ~~expenses and the expenses.~~ *The*

1 court shall have jurisdiction to award relief, *the relief* authorized
2 by this section and any other additional relief.

3 (g) Any person licensed by the State of California who violates
4 any provision of Section 2923.5, 2923.7, 2923.73, 2923.74, 2924,
5 or 2924b shall be deemed to have violated ~~that person's~~ *the*
6 licensing law *applicable to that person*, and shall be subject to
7 enforcement action by its licensing agency.

8 ~~SEC. 8.~~

9 *SEC. 9.* Section 2924 of the Civil Code, as amended by Section
10 1 of Chapter 180 of the Statutes of 2010, is amended to read:

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

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

34 (A) A statement identifying the mortgage or deed of trust by
35 stating the name or names of the trustor or trustors and giving the
36 book and page, or instrument number, if applicable, where the
37 mortgage or deed of trust is recorded or a description of the
38 mortgaged or trust property.

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

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

6 (D) Proof of ownership of the mortgage or deed of trust note
7 attached to the notice of default and noted on the declaration of
8 compliance required by Section 2923.74. This proof shall include
9 a copy of the mortgage or deed of trust note, and evidence of all
10 assignments and endorsements of the mortgage or deed of trust
11 note and mortgage or deed of trust, along with a declaration
12 attesting to the existence and possession of the note as well as all
13 the assignments and endorsements, and certifying ownership of
14 the mortgage or deed of trust and the right to foreclose. If this
15 proof cannot be located, the mortgagee, trustee, beneficiary, or
16 authorized agent shall attach a declaration signed either by an
17 individual having personal knowledge of the facts stated within,
18 or by an individual with authority to bind the mortgagee, trustee,
19 beneficiary, or authorized agent, who certifies that the declaration
20 is based upon records that were made in the regular course of
21 business at or near the time of the events recorded, stating the
22 following:

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

25 (ii) A statement that the person cannot reasonably obtain
26 possession of the note, and a description of the reasonable efforts
27 made to obtain the note.

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

30 (I) The date of execution.

31 (II) The parties.

32 (III) The principal amount of the loan.

33 (IV) The amortization period of the loan.

34 (V) The initial interest rate and, if applicable, the initial date
35 and the frequency of any adjustments to the interest rate, and the
36 index and margin used to calculate the interest rate at the time of
37 any scheduled adjustment.

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

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

5 (E) If the default is curable pursuant to Section 2924c, the
6 statement specified in paragraph (1) of subdivision (b) of Section
7 2924c.

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

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

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

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

28 (c) A recital in the deed executed pursuant to the power of sale
29 of compliance with all requirements of law regarding the mailing
30 of copies of notices or the publication of a copy of the notice of
31 default or the personal delivery of the copy of the notice of default
32 or the posting of copies of the notice of sale or the publication of
33 a copy thereof shall constitute prima facie evidence of compliance
34 with these requirements and conclusive evidence thereof in favor
35 of bona fide purchasers and encumbrancers for value and without
36 notice.

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

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

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

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

6 (e) There is a rebuttable presumption that the beneficiary
7 actually knew of all unpaid loan payments on the obligation owed
8 to the beneficiary and secured by the deed of trust or mortgage
9 subject to the notice of default. However, the failure to include an
10 actually known default shall not invalidate the notice of sale and
11 the beneficiary shall not be precluded from asserting a claim to
12 this omitted default or defaults in a separate notice of default.

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

14 SEC. 9. Section 2924 of the Civil Code, as amended by Section
15 2 of Chapter 180 of the Statutes of 2010, is repealed.

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

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

35
36 ~~—“In accordance with Section 2924b, Civil Code, request is hereby
37 made that a copy of any notice of default and a copy of any notice of sale
38 under the deed of trust (or mortgage) recorded _____, _____, in Book
39 _____ page _____ records of _____ County, (or filed for record with
40 recorder's serial number _____, _____ County) California, executed~~

1 on the mortgage or deed of trust loan account and an explanation
2 as to why those fees were charged.

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

5 (iv) A breakdown of the current escrow charges showing how
6 they are calculated and the reasons for any increase within the last
7 24 months and a breakdown of any shortage, deficiency, or surplus
8 in the escrow account over the past three years.

9 (2) At least 20 days before the date of sale, deposit or cause to
10 be deposited in the United States mail an envelope, sent by
11 registered or certified mail with postage prepaid, containing a copy
12 of the notice of the time and place of sale, addressed to each person
13 whose name and address are set forth in a duly recorded request
14 therefor, directed to the address designated in the request and to
15 each trustor or mortgagor at his or her last known address if
16 different than the address specified in the deed of trust or mortgage
17 with power of sale.

18 (3) As used in paragraphs (1) and (2), the “last known address”
19 of each trustor or mortgagor means the last business or residence
20 physical address actually known by the mortgagee, beneficiary,
21 trustee, or other person authorized to record the notice of default.
22 For the purposes of this subdivision, an address is “actually known”
23 if it is contained in the original deed of trust or mortgage, or in
24 any subsequent written notification of a change of physical address
25 from the trustor or mortgagor pursuant to the deed of trust or
26 mortgage. For the purposes of this subdivision, “physical address”
27 does not include an e-mail or any form of electronic address for a
28 trustor or mortgagor. The beneficiary shall inform the trustee of
29 the trustor’s last address actually known by the beneficiary.
30 However, the trustee shall incur no liability for failing to send any
31 notice to the last address unless the trustee has actual knowledge
32 of it.

33 (4) A “person authorized to record the notice of default or the
34 notice of sale” shall include an agent for the mortgagee or
35 beneficiary, an agent of the named trustee, any person designated
36 in an executed substitution of trustee, or an agent of that substituted
37 trustee.

38 (e) The mortgagee, trustee, or other person authorized to record
39 the notice of default or the notice of sale shall do the following:

1 ~~(1) Within one month following recordation of the notice of~~
2 ~~default, deposit or cause to be deposited in the United States mail~~
3 ~~an envelope, sent by registered or certified mail with postage~~
4 ~~prepaid, containing a copy of the notice with the recording date~~
5 ~~shown thereon, addressed to each person set forth in paragraph~~
6 ~~(2), provided that the estate or interest of any person entitled to~~
7 ~~receive notice under this subdivision is acquired by an instrument~~
8 ~~sufficient to impart constructive notice of the estate or interest in~~
9 ~~the land or portion thereof that is subject to the deed of trust or~~
10 ~~mortgage being foreclosed, and provided the instrument is recorded~~
11 ~~in the office of the county recorder so as to impart that constructive~~
12 ~~notice prior to the recording date of the notice of default and~~
13 ~~provided the instrument as so recorded sets forth a mailing address~~
14 ~~that the county recorder shall use, as instructed within the~~
15 ~~instrument, for the return of the instrument after recording, and~~
16 ~~which address shall be the address used for the purposes of mailing~~
17 ~~notices herein.~~

18 ~~(2) The persons to whom notice shall be mailed under this~~
19 ~~subdivision are:~~

20 ~~(A) The successor in interest, as of the recording date of the~~
21 ~~notice of default, of the estate or interest or any portion thereof of~~
22 ~~the trustor or mortgagor of the deed of trust or mortgage being~~
23 ~~foreclosed.~~

24 ~~(B) The beneficiary or mortgagee of any deed of trust or~~
25 ~~mortgage recorded subsequent to the deed of trust or mortgage~~
26 ~~being foreclosed, or recorded prior to or concurrently with the~~
27 ~~deed of trust or mortgage being foreclosed but subject to a recorded~~
28 ~~agreement or a recorded statement of subordination to the deed of~~
29 ~~trust or mortgage being foreclosed.~~

30 ~~(C) The assignee of any interest of the beneficiary or mortgagee~~
31 ~~described in subparagraph (B), as of the recording date of the notice~~
32 ~~of default.~~

33 ~~(D) The vendee of any contract of sale, or the lessee of any~~
34 ~~lease, of the estate or interest being foreclosed that is recorded~~
35 ~~subsequent to the deed of trust or mortgage being foreclosed, or~~
36 ~~recorded prior to or concurrently with the deed of trust or mortgage~~
37 ~~being foreclosed but subject to a recorded agreement or statement~~
38 ~~of subordination to the deed of trust or mortgage being foreclosed.~~

1 ~~(E) The successor in interest to the vendee or lessee described~~
2 ~~in subparagraph (D), as of the recording date of the notice of~~
3 ~~default.~~

4 ~~(F) The office of the Controller, Sacramento, California, where,~~
5 ~~as of the recording date of the notice of default, a “Notice of Lien~~
6 ~~for Postponed Property Taxes” has been recorded against the real~~
7 ~~property to which the notice of default applies.~~

8 ~~(3) At least 20 days before the date of sale, deposit or cause to~~
9 ~~be deposited in the United States mail an envelope, sent by~~
10 ~~registered or certified mail with postage prepaid, containing a copy~~
11 ~~of the notice of the time and place of sale addressed to each person~~
12 ~~to whom a copy of the notice of default is to be mailed as provided~~
13 ~~in paragraphs (1) and (2), and addressed to the office of any state~~
14 ~~taxing agency, Sacramento, California, that has recorded,~~
15 ~~subsequent to the deed of trust or mortgage being foreclosed, a~~
16 ~~notice of tax lien prior to the recording date of the notice of default~~
17 ~~against the real property to which the notice of default applies.~~

18 ~~(4) Provide a copy of the notice of sale to the Internal Revenue~~
19 ~~Service, in accordance with Section 7425 of the Internal Revenue~~
20 ~~Code and any applicable federal regulation, if a “Notice of Federal~~
21 ~~Tax Lien under Internal Revenue Laws” has been recorded,~~
22 ~~subsequent to the deed of trust or mortgage being foreclosed,~~
23 ~~against the real property to which the notice of sale applies. The~~
24 ~~failure to provide the Internal Revenue Service with a copy of the~~
25 ~~notice of sale pursuant to this paragraph shall be sufficient cause~~
26 ~~to rescind the trustee’s sale and invalidate the trustee’s deed, at~~
27 ~~the option of either the successful bidder at the trustee’s sale or~~
28 ~~the trustee, and in either case with the consent of the beneficiary.~~
29 ~~Any option to rescind the trustee’s sale pursuant to this paragraph~~
30 ~~shall be exercised prior to any transfer of the property by the~~
31 ~~successful bidder to a bona fide purchaser for value. A rescision of~~
32 ~~the trustee’s sale pursuant to this paragraph may be recorded in a~~
33 ~~notice of rescision pursuant to Section 1058.5.~~

34 ~~(5) The mailing of notices in the manner set forth in paragraph~~
35 ~~(1) shall not impose upon any licensed attorney, agent, or employee~~
36 ~~of any person entitled to receive notices as herein set forth any~~
37 ~~duty to communicate the notice to the entitled person from the fact~~
38 ~~that the mailing address used by the county recorder is the address~~
39 ~~of the attorney, agent, or employee.~~

1 ~~(d) Any deed of trust or mortgage with power of sale hereafter~~
2 ~~executed upon real property or an estate for years therein may~~
3 ~~contain a request that a copy of any notice of default and a copy~~
4 ~~of any notice of sale thereunder shall be mailed to any person or~~
5 ~~party thereto at the address of the person given therein, and a copy~~
6 ~~of any notice of default and of any notice of sale shall be mailed~~
7 ~~to each of these at the same time and in the same manner required~~
8 ~~as though a separate request therefor had been filed by each of~~
9 ~~these persons as herein authorized. If any deed of trust or mortgage~~
10 ~~with power of sale executed after September 19, 1939, except a~~
11 ~~deed of trust or mortgage of any of the classes excepted from the~~
12 ~~provisions of Section 2924, does not contain a mailing address of~~
13 ~~the trustor or mortgagor therein named, and if no request for special~~
14 ~~notice by the trustor or mortgagor in substantially the form set~~
15 ~~forth in this section has subsequently been recorded, a copy of the~~
16 ~~notice of default shall be published once a week for at least four~~
17 ~~weeks in a newspaper of general circulation in the county in which~~
18 ~~the property is situated, the publication to commence within 10~~
19 ~~business days after the filing of the notice of default. In lieu of~~
20 ~~publication, a copy of the notice of default may be delivered~~
21 ~~personally to the trustor or mortgagor within the 10 business days~~
22 ~~or at any time before publication is completed, or by posting the~~
23 ~~notice of default in a conspicuous place on the property and mailing~~
24 ~~the notice to the last known address of the trustor or mortgagor.~~

25 ~~(e) Any person required to mail a copy of a notice of default or~~
26 ~~notice of sale to each trustor or mortgagor pursuant to subdivision~~
27 ~~(b) or (c) by registered or certified mail shall simultaneously cause~~
28 ~~to be deposited in the United States mail, with postage prepaid and~~
29 ~~mailed by first-class mail, an envelope containing an additional~~
30 ~~copy of the required notice addressed to each trustor or mortgagor~~
31 ~~at the same address to which the notice is sent by registered or~~
32 ~~certified mail pursuant to subdivision (b) or (c). The person shall~~
33 ~~execute and retain an affidavit identifying the notice mailed,~~
34 ~~showing the name and residence or business address of that person,~~
35 ~~that he or she is over the age of 18 years, the date of deposit in the~~
36 ~~mail, the name and address of the trustor or mortgagor to whom~~
37 ~~sent, and that the envelope was sealed and deposited in the mail~~
38 ~~with postage fully prepaid. In the absence of fraud, the affidavit~~
39 ~~required by this subdivision shall establish a conclusive~~
40 ~~presumption of mailing.~~

1 (f) (1) ~~Notwithstanding subdivision (a), with respect to separate~~
2 ~~interests governed by an association, as defined in subdivision (a)~~
3 ~~of Section 1351, the association may cause to be filed in the office~~
4 ~~of the recorder in the county in which the separate interests are~~
5 ~~situated a request that a mortgagee, trustee, or other person~~
6 ~~authorized to record a notice of default regarding any of those~~
7 ~~separate interests mail to the association a copy of any trustee's~~
8 ~~deed upon sale concerning a separate interest. The request shall~~
9 ~~include a legal description or the assessor's parcel number of all~~
10 ~~the separate interests. A request recorded pursuant to this~~
11 ~~subdivision shall include the name and address of the association~~
12 ~~and a statement that it is a homeowners' association. Subsequent~~
13 ~~requests of an association shall supersede prior requests. A request~~
14 ~~pursuant to this subdivision shall be recorded before the filing of~~
15 ~~a notice of default. The mortgagee, trustee, or other authorized~~
16 ~~person shall mail the requested information to the association~~
17 ~~within 15 business days following the date the trustee's deed is~~
18 ~~recorded. Failure to mail the request, pursuant to this subdivision,~~
19 ~~shall not affect the title to real property.~~

20 (2) ~~A request filed pursuant to paragraph (1) does not, for~~
21 ~~purposes of Section 27288.1 of the Government Code, constitute~~
22 ~~a document that either effects or evidences a transfer or~~
23 ~~encumbrance of an interest in real property or that releases or~~
24 ~~terminates any interest, right, or encumbrance of an interest in real~~
25 ~~property.~~

26 (g) ~~No request for a copy of any notice filed for record pursuant~~
27 ~~to this section, no statement or allegation in the request, and no~~
28 ~~record thereof shall affect the title to real property or be deemed~~
29 ~~notice to any person that any person requesting copies of notice~~
30 ~~has or claims any right, title, or interest in, or lien or charge upon~~
31 ~~the property described in the deed of trust or mortgage referred to~~
32 ~~therein.~~

33 (h) ~~“Business day,” as used in this section, has the meaning~~
34 ~~specified in Section 9.~~

35 *SEC. 10. No reimbursement is required by this act pursuant*
36 *to Section 6 of Article XIII B of the California Constitution because*
37 *the only costs that may be incurred by a local agency or school*
38 *district will be incurred because this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

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