

CALIFORNIA SENATE BILL 1137

SYNOPSIS

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UNITED TRUSTEES ASSOCIATION

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- NOTE: Words in bold are a generic reference to the provisions of the bill itself. SB 1137 should be referenced for particular details. A copy of SB 1137 is available at www.unitedtrustees.com under the Legislative tab for California.
- SEC 1 Legislative findings that there is a foreclosure problem in California warranting the legislature to act under urgency legislation taking immediate effect upon execution by Governor Schwarzenegger on July 8, 2008. The provisions of Section 2 and Section 4 become operative September 8, 2008. The bill remains in effect until January 1, 2013 unless changed by a later enacted statute.
- SEC. 2 ADD §2923.5 to CIVIL CODE (takes effect September 8, 2008):
- (a) (1) The trustee, beneficiary or authorized agent may not file a Notice of Default until 30 days after:
- **Contact** under (2), or
 - Satisfying **Due Diligence** under (g).
- (2) **Contact** with Borrower to be in person or by telephone in order to:
- “assess the borrower’s financial situation”; and
 - “explore options” to avoid foreclosure; and
 - “advise of right” to subsequent meeting to be scheduled w/i 14 days; and
 - provide toll-free number to HUD certified counseling agency.
- (b) The recorded Notice of Default shall include a **Declaration** by the beneficiary or authorized agent that it has
- **Contacted** the borrower, or
 - tried with **Due Diligence**, or
 - the property has been **Surrendered** by the borrower.
- (c) If the Notice of Default is already recorded, the trustee, beneficiary or authorized agent must include a **Declaration** with the Notice of Sale 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”; or
- (2) “Lists the efforts made, if any, to contact the borrower in the event no contact was made”.
- (d) Loss Mitigation personnel may participate by telephone during **Contact**.
- (e) The term “borrower” includes “trustor”.
- (f) Borrower may designate a HUD certified counseling agency and that contact will satisfy the **Contact** requirements.

- (g) A Notice of Default can be recorded without **Contact** if the beneficiary or authorized agent performs **Due Diligence**, defined as all of the following:
- (1) Attempting to contact borrower by sending a first-class letter that includes a toll-free number to a HUD certified counseling agency; and
 - (2)
 - (A) Thereafter attempt to contact borrower by telephone at least 3 times at different hours on different days at the primary telephone number on file.
 - (B) May use an automated dialer system if connected to a lived representative after the call is answered.
 - (C) Telephonic contact is satisfied if determine that borrower's/trustor's primary telephone number and secondary telephone number, if any, in file have been disconnected.
 - (3) If no response within 2 weeks of telephonic contacts in (2) above, send a letter certified mail return receipt requested.
 - (4) Provide a toll-free telephone number with "access to a live representative during business hours";
 - (5) Posted a "prominent link" on the website homepage, if any, with the following:
 - (A) "Options that may be available" if:
 - "unable to afford" payments; and
 - "wish to avoid foreclosure"; and
 - "instructions ... advising ... on steps to ... explore those options";
 - (B) A list of financial documents to collect when discussing options;
 - (C) A toll-free telephone number for borrowers who wish to discuss options;
 - (D) A toll-free number to find a HUD-certified housing counseling agency;
- (h) The above subdivisions for (a) NOD notice, (c) NOS notice, and (g) due diligence do NOT apply if:
- (1) The borrower has surrendered the property as evidenced by either:
 - "a letter confirming surrender", or
 - "delivery of the keys" to the beneficiary or authorized agent; or
 - (2) The borrower has "contracted" with an entity whose primary business is advising people on how to "extend the foreclosure process" and "avoid their contractual obligations"; or
 - (3) The borrower has filed for bankruptcy, and the case has not been closed.
- (i) This section applies to loans made from January 1, 2003 to December 31, 2007 that are owner-occupied residential real properties.

SEC. 3 ADD §2923.6 to CIVIL CODE (takes effect July 8, 2008)

- (a) The legislature finds that a loan Servicer's duty is to the pool and not a particular loan and it acts in the best interest of all parties if it agrees to a loan modification or workout if:
- (1) The loan is in default, or default is "reasonably foreseeable"; and
 - (2) The anticipated "net present value basis" recovery under the loan modification or workout exceeds the anticipated recovery through foreclosure.
- (b) The legislative intent is to offer a loan modification or workout if consistent with it's contractual authority.

- SEC. 4 ADD §2924.8 to CIVIL CODE (takes effect September 8, 2008):
- (a) Upon posting a Notice of Sale, the trustee or authorized agent shall also post a **Notice** and mail a **Notice** addressed to “Resident of property subject to foreclosure sale” that contains statutory language to be given in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean per Civil Code §1632.
 - (b) Declares it to be an infraction to tear down the above **Notice**.
 - (c) The state government is to make available the language translations for the **Notice**.
 - (d) The **Notice** is only required for residential real property if the billing address is different from the property address.

- SEC. 5 ADD §2929.3 to CIVIL CODE (takes effect July 8, 2008)
- (a) (1) A legal owner of vacant residential property acquired or purchased by foreclosure may face a fine of up to \$1,000.00 per day from a governmental agency for the failure to maintain the property. Notice of intent is sent to the address on the trustee’s deed;
 - (2) The governmental agency shall provide not less than 30 days to correct the violation and allow for a hearing and opportunity to contest the fine.
 - (b) “Failure to maintain” includes:
 - failure to maintain the exterior, including excessive foliage growth diminishing surrounding property values.
 - failure to prevent trespassers or squatters from occupying the property; or
 - failure to prevent mosquito larvae from growing in standing water or other public nuisances.
 - (c)-(f) Miscellaneous provisons.
 - (g) This section only applies to residential property.

- SEC. 6 ADD §1161b to CODE OF CIVIL PROCEDURE (takes effect July 8, 2008)
- (a) A tenant or subtenant of a rental housing unit at the time of the foreclosure shall be given a 60 day notice to quit before commencing an eviction.
 - (b) This section shall NOT apply to any party to the Note who remains as a tenant or subtenant in the property.

SEC. 8 The provisions of the act are severable in the event any provision is invalid.

SEC. 9 Miscellaneous.

- SEC. 10
- (a) This is an Urgency Statute to take effect immediately
 - (b) Section 2 and Section 4 shall become operative 60 days after the effective date of this act.