



# RELIABLE TRUST DEED NEWS

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### Foreclosure Procedure

#### New Laws

**Governor Schwarzenegger signed legislation on July 8, 2008, effective immediately, regarding all California residential mortgage foreclosures.**

**The law was changed to address the influx of mortgage foreclosures in California.**

**These changes will effect the manner in which many foreclosures are conducted as well as the care and maintenance of property acquired by beneficiaries through the action of foreclosure.**

**More than ever experience, knowledge and expertise will be needed to guide the Lender through the foreclosure process.**

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## New Foreclosure Requirements - Law in California

The following was reprinted with permission of Mark Blackman, Esq., of the Law Offices of Alpert, Barr & Grant.



July 16, 2008

To our valued clients:

On July 8, 2008, the California legislature adopted and the Governor signed Senate Bill 1137 designed to deal with the increasing number of California foreclosures and subsequent evictions and resulting vacant property.

### The new law:

- (1) Requires lenders to contact their borrowers to discuss their financial options to avoid foreclosure *before* a Notice of Default (“NOD”) can be recorded and served.
- (2) Requires a lender to give notice to a non-owner occupied resident of the existence of the foreclosure and the potential for being evicted in a short period of time.
- (3) Requires a lender to give the non-owner resident a 60 day notice to terminate possession (increased from the existing 30 day notice); and
- (4) Requires the person or en-

tity who acquires the property to maintain the property and protect it from vandalism.

The first two items become effective on September 6, 2008, while the latter two items became effective on July 8, 2008.

In order to assist your company with the implementation of the new law, Alpert, Barr & Grant, APLC prepared the enclosed set of questions (and answers) we anticipate you might have regarding the various components of the newly enacted law.

### 1. What new requirements exist under the new provisions of the California non-judicial



foreclosure law?

### A. Pre-foreclosure Contact/Counseling

(1) A Notice or Default (“NOD”) may not be filed until 30 days after the borrower is contacted to assess the borrower’s financial situation and to explore options to avoid foreclosure or until 30 days after satisfying due diligence requirements, California *Civil Code* §2923.5 (a)(2)

(2) A lender must notify the borrower of the borrower’s right to request a subsequent meeting which must be scheduled within 14 days of the borrower’s request. The meeting may be telephonic, California *Civil Code* §2923.5 (a)(2).

(3) A lender must provide the borrower with a toll free number to HUD certified counseling agencies, California *Civil Code* §2923.5 (a)(2).

(4) A lender must sign a declaration under penalty of perjury stating that

(a) the borrower has been contacted or

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**Provide the borrower with the toll free number made available by the US Department of Housing and Urban Development to find a HUD certified housing counseling agency (800) 569-4287**

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(b) due diligence has been used to contact the borrower or that the borrower has surrendered the property. "Due Diligence" shall include providing communication to the debtor with a link to information on options to avoid foreclosure which shall be on the website for the lender or its agent, California *Civil Code* §2923.5 (a)(2) (b).

**2. What constitutes "due diligence" under the law?**

**(All of the following must be completed)**

**A. First Class Mail**

(1) The lender shall first attempt to contact the borrower by first class mail and shall include a HUD-certified housing counseling agency. California *Civil Code* §2923.5(g)(1).

**B. Telephonic Communication**

(1) After the correspondence, the lender shall attempt to contact the borrower by telephone on at least three occasions, at different hours and on different days. Calls shall be made to the borrower's primary number on file. California *Civil Code* §2923.5(g)(2)(a).

(2) Auto-dialers may be used to contact debtors provided that if the call is answered the call is referred to a live person. California *Civil Code* §2923.5(g)(2) (b).

(3) The telephone contact requirement is satisfied if both the primary and secondary primary contact numbers are disconnected. California *Civil Code* §2923.5(g)(2)(c).

**C. Certified Mail**

(1) If the borrower does not respond within two weeks after the telephone call requirements have been satisfied, the lender must send correspondence by certified mail, return receipt requested. Said correspondence shall provide a means to contact a lender's live representative during business hours by toll free telephone number. California *Civil Code* §2923.5(g)(3), (4).

**D. Internet Information**

(1) The lender/agent shall post a prominent link on its homepage to the following information: California *Civil Code* §2923.5(g)(5).

(a) Options available to borrowers who cannot afford their mortgage payments and who wish to avoid foreclosure and instructions to borrowers advising them on the steps. California *Civil Code* §2923.5(g)(5)(a).

(b) A list of financial documents borrowers should collect and be prepared to discuss. California *Civil Code* §2923.5(g)(5)(b).

(c) A toll free number for the borrower to discuss the borrower's options. California *Civil Code* §2923.5(g)(5)(c).

(d) The toll free number from HUD to find a HUD certified housing counseling agency. California *Civil Code* §2923.5(g)(5)(d).

**3. Are there any exceptions to due diligence requirements?**

Yes. California *Civil Code* §2923.5(h).

A. The borrower has surrendered the property either in writing confirming surrender, or by delivery of the keys to the lender. California *Civil Code* §2923.5(h)(1).

B. The borrower has contacted an advisor who deals with advising borrowers how to extend the foreclosure process and avoid their contractual obligations. California *Civil Code* §2923.5(h)(2).

C. The borrower filed bankruptcy, but the proceedings are not finalized. California *Civil Code* §2923.5(h)(3).

**4. Notice issues.**

**If a NOD was delivered before July 8, 2008, does the NOD have to be resent?**

**A. Declarations Required For Existing Notices Of Default**

No. If a NOD was filed before the enactment date of the law (July 8, 2008) then a declaration must be included as part

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**Mmmm, foreclosed home. Let's see, inspect the property for violations? That fine will be \$1,000 per day until the repair is done!**

(Continued from page 2)

of the Notice of Sale. The declaration shall state that:

(1) The borrower was contacted to assess the borrower's financial situation and explore options to avoid foreclosure.

(2) The lender must list the efforts made to contact the borrower in event no contact was made.

(3) A lender's loss mitigation personnel may participate by telephone during any contact.

**Does the new foreclosure law require any notice to be given to a borrower's tenant?**

**B. New Notices Of Sale Requirement**

A new notice has been created and must be posted and mailed at the same time the Notice of Sale is posted. The notice shall advise residents that the property may be sold and that the residents' continuing right to reside at the property may be affected. *California Civil Code* §2924.5(a).

**5. What new information is required on the Notice Of Sale?**

A. A notice shall be mailed in an envelope addressed to the "Resident of Property Subject to Foreclosure Sale" in English and in the languages identified in *California Civil Code* §1632. The notice must contain the following:

(1) A foreclosure process has commenced which will affect your right to continue to live on property. *California Civil Code* §2924.8(a).

(2) The property may be sold at a foreclosure sale within 20 days after the Notice Of Sale. *California Civil Code* §2924.8(a).

(3) If you are a renter, the new property owner may enter into a new lease or give you 60 days notice to vacate the property and that other laws may prohibit eviction or permit you additional time and that you may wish to contact a lawyer, Legal Aid and/or a housing counseling agency to discuss your rights. *California Civil Code* §2924.8(a).

(4) The State shall provide translations. *California Civil Code* §2924.8(c).

**B. Are there penalties for removing the posted notice to the residents?**

It shall be an infraction to tear down the notice within 72 hours of posting. Violations shall be subject to a \$100.00 fine. *California Civil Code* §2924.8(b).

**C. When is a notice to the resident required?**

This notice is only required on residential real property where the borrower's building address is different than the property address. *California Civil Code* §2924.8(d).

**6. Are there new vacant property obligations to maintain?**

Yes. *California Civil Code* §2929.3.

A. Maintenance - A legal owner or subsequent buyer shall

maintain the residential property. A governmental entity may impose a civil fine of up to \$1,000.00 per day. The governmental entity shall give the owner/foreclosing creditor 14 days notice of its intent to impose a fine of up to \$1,000.00 per day if the repairs are not commenced within a period of not less than 14 days or completed within a period of not less than 30 days. *California Civil Code* The notice shall be mailed to the address set forth in the trustee's deed upon sale. *California Civil Code* §2929.3(a)(1).

**B. What constitutes a fail-**

**"We would suggest that you consider immediately beginning to contact defaulting debtors and complying with the law by August 1, 2008, to avoid any delay once September 6, 2008 arrives."**



**It would probably be smart to contact Reliable Trust Deed Services now to initiate the correct procedures to contact delinquent borrowers to protect your ability to foreclose on defaulted loans after September 6, 2008**

**ure to maintain?**

Failure to care for the exterior of the property including foliage overgrowth. California Civil Code §2929.3(b).

Failing to prevent trespassers or squatters. California Civil Code §2929.3(b).

Failure to take action to prevent mosquito larvae to grow in standing water. California Civil Code §2929.3(b).



**Always check with competent legal counsel before taking precipitous actions.**

**C. Are there any exceptions to the obligation?**

The governmental entity may provide the owner with less than 30 days to remedy a condition (under certain conditions before imposing a fine if the condition threatens public safety. California Civil Code §2929.3 (c).

D. The fines shall not pre-empt local abatement ordinances. California Civil Code §2929.3(f).

**7. Have the eviction requirements changed?**

Prior to the enactment of this law following foreclosure a buyer at the foreclosure sale was required to give a three day notice to a former owner and a 30 day notice to a tenant. The new legislation requires, as described above (1) a notice to be posted and mailed at the same time as the Notice Of Sale is posted advising occupants of a pending foreclosure and the possible loss of the property, California Civil Code §2924.8 and (2) a 60 day notice of termination of tenancy before an unlawful detainer complaint may be filed. California Code of Civil Procedure §1161(b).

**8. Which new laws apply to which loans and properties and when do the new laws go into effect?**

A. Notice Of Default requirements Applies only to real property loans made between January 1, 2003 and December 31, 2007, inclusive on residential, owner occupied real property. This law goes into effect on September 6, 2008, however in order to send out a Notice of Default on that date contact should be initiated at least 30 days before. California Civil Code §2923.5.

B. Notice to occupants of residential real property regarding pending foreclosure sale Applies only to loans secured by residential real property if the billing address on the mortgage note is different than the property address. This law goes into effect on September 6, 2008. California Civil Code §2924.8

C. Maintenance of vacant residential real property Applies to any residential real property. This law went into effect on July 8, 2008. California Civil Code §2923.3.

D. Notification of termination of tenancy: Increased to 60 days if the residential property is not occupied by the borrower. This law goes into effect on September 6, 2008. California Civil Code §2924.8.

We anticipate the State of California will change the form language of the Notice of Default (or create a form declaration) before September 6, 2008. The state is mandated to provide the translated notice to non-owner residents of residential property prior to foreclosure. Upon receipt we will endeavor to forward copies to you.

In the interim keep in mind that you cannot record a Notice of De-

fault until 30 days after you have made initial contact with the debtor or completed the due diligence requirements. We would suggest that you consider immediately beginning to contact defaulting debtors and complying with the law by August 1, 2008, to avoid any delay once September 6, 2008, arrives.

We look forward to hearing from you.

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