

LAW REVIEW

Published in the Sierra Sun
March 13, 2009

By: Jim Porter

TWO TOPICS: CALL TO ACTION SUNDAY; NEW FORECLOSURE LAWS

Before we discuss another new California foreclosure law designed to slow down foreclosures, let's be mindful of the important, local Call to Action program this Sunday.

Call to Action

Sunday, March 15th may not be a Day in Infamy, but it is an equally important day for our Truckee-North Tahoe community.

You will receive a call at home asking for a donation to help our local non-profits who are in dire need of additional funding given the ever declining state of our economy. There is no question about the need. Demand at local food banks is up 30 percent, senior meals are up 32 percent and domestic violence cases are up 15 percent, while charitable contributions to local non-profits are down by 65 percent. Even if you are not doing as well as you would like, there is someone doing worse and who needs your help.

This Sunday evening be ready for the call. Help raise \$100,000.

To volunteer for the Sunday phone bank contact Theresa May Duggan at theresaduggan@sbcglobal.net. To make a donation before Sunday or to learn more go to Truckee Tahoe Community Foundation's web site at www.ttcf.net/give.

New Foreclosure Law

Last week we discussed new foreclosure laws in California. There was yet another foreclosure law approved by Governor Arnie on February 20, 2009.

As you will recall from our March 6th Law Review, the basic foreclosure process in California takes about four months. First the lender files a Notice of Default on the delinquent loan. After three months, the lender files, posts and publishes a Notice of Sale (of the property) over a 21 day period. The Notice of Sale is what you see in the newspaper. Then the property subject to foreclosure is auctioned, usually going back to the bank.

Under new Civil Code section 2923.52, the lender is delayed from doing a Notice of Sale for 90 days. The purpose is to allow the lender and borrower to try and workout a loan modification to prevent foreclosure.

Section 2923.52 applies to loans recorded from January 1, 2003, to January 1, 2008, secured by California residential real property. The property must have been the borrower's primary residence and the borrower must have occupied the property at the time the loan became delinquent. The new law applies only to first trust deeds.

Failure to conform to the 90-day delay on foreclosing does not void a foreclosure but subjects the lender to license disciplinary proceedings by the Commissioner of Corporations, the Commissioner of Financial Institutions or the Real Estate Commissioner depending on who regulates the lender.

Loan Modification Program

Section 2923.52 has a significant exception. It does not apply if the lender has recently adopted a comprehensive loan modification program that has been approved by one of the Commissioners mentioned above. The Code specifies what must be included in a loan modification program, which may include an interest rate reduction, an extension of the loan term, a deferral of some portion of the loan principal to the end of the loan, or even a reduction of the principal – the loan amount.

Supporters of the so-called California Foreclosure Prevention Act hail it as significant while detractors argue the new law is not tough enough to be really helpful. It remains to be seen whether lenders will adopt loan modification programs that are really beneficial for borrowers in trouble.

Remember, foreclosure consultants are prohibited from taking upfront fees from homeowners looking for assistance in modifying their home loans.

New Federal Refinancing Laws

The big news on the horizon for home borrowers in trouble is coming from the Obama Administration. To find out more about refinancing or modifying home loans you can search the internet using these key words: Home Owner Affordability and Stability Plan Fact Sheet (HASP), Home Owner Stability Initiative, and Making Homes Affordable. Visit the Mortgage Law Network website at www.mortgagelawnetwork.com. Also look at the US Treasury Loan Modification program at www.ustreas.gov/news.

Many of the federal programs are applicable only for loans financed through or backed by Fannie Mae or Freddie Mac. For more information on these programs go to www.fanniemae.com/homeaffordable or www.freddie.mac.com/avoidforeclosure. We have all been hearing the cliché “who’s going to bail me out?” The feds are lining up billions of dollars to help homeowners in financial trouble if you meet the criteria. Do your homework and see if you are eligible.

Jim Porter is an attorney with Porter Simon, with offices in Truckee, South Lake Tahoe, Incline Village and Reno and a licensed California Real Estate Broker. He was the Governor's appointee to the Bipartisan McPherson Commission on political ethics and the California Fair Political Practices Commission. He may be reached at porter@portersimon.com or at the firm's web site www.portersimon.com

© 2009