

LAW REVIEW

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NEW FORECLOSURE LAWS SET TO START

As you recall, we've featured several new laws designed to slow down foreclosures in the Great State.

Civil Code Section 2923.5 requires lenders to contact borrowers in person or by telephone at least 30 days before filing a Notice of Default.

Civil Code Section 2924.8 requires lenders to send notices to tenants that a foreclosure process has begun and that a tenant, as opposed to the borrower, has a right to 60-day eviction notice.

Civil Code Section 2929.3 requires foreclosing lenders or purchasers of property through foreclosure sales to maintain the vacant residential property under penalty of a fine of up to \$1,000 per day.

FORECLOSURE PREVENTION ACT

The newest California foreclosure law is Civil Code Section 2923.52 which we highlighted in a March 13, 2009 *Law Review*. The California Foreclosure Prevention Act, signed into law on February 20, 2009, requires lenders on owner-occupied residences to delay for 90 days after filing a Notice of Default, before filing and publishing a Notice of Sale--a 90-day moratorium in essence.

The 90-day hold up on foreclosure proceedings does not apply if the lender has a comprehensive loan modification program that has been approved

by the Department of Corporations, Real Estate Commissioner, or other State agencies.

The way the Act is written it is difficult to tell when it takes effect. It appears that the Act applies to foreclosures started after June 15, 2009 unless the lender obtains a 30-day extension. Bottom line, borrower's facing foreclosure that are living in their homes are able to reap the benefits of Section 2923.52. Lenders must offer an approved comprehensive loan modification program or the foreclosure process, which normally takes about four months, will be extended by 90 days.

In coming weeks we will be reading more about these loan modification programs. To see lists of lenders that comply with the Act see www.corp.ca.gov/FSD/CFP/pdf/ExemptList.pdf.

SHORT SALES

It's about time. I've counseled dozen of borrowers who have attempted to work with lenders on short sales and deeds-in-lieu of foreclosure, most who are willing to allow their properties to be foreclosed upon, and almost without exception, lenders are impossible to deal with. They request loan modification packages or short sale packages, then request additional documents, then request even more documents, and then claim never to have received any documents. It goes on and on. On occasion, a short sale is concluded.

Lenders are slow to realize that on upside down properties they will lose more money completing a foreclosure that requires payment of taxes, upkeep of the property, an obligation to pay a sales commission on a re-sale, drastically

lowered values of properties, etc. Lenders would be ahead of the game working with their upside down borrowers. But what do I know.

Residential borrowers in trouble, read the news articles, check with the Real Estate Commissioner and Department of Corporations websites about whether your lender has an accepted loan modification program (and read it), and depending on when your foreclosure was started, you may be able to tell your lender it needs to tack on an extra 90-days to complete a foreclosure.

FEDERAL HELP

Also, see if you can get any help from the federal programs such as the Troubled Asset Relief Program (TARP) and Housing and Economic Recovery Act (HERA). Check the US Treasury Loan Modification Program at www.ustreas.gov/news and visit the Mortgage Law Network website at www.mortgagelawnetwork.com, and look for the Homeowner Affordability and Stability Plan fact sheet (HASP).

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