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New Foreclosure Communication Requirements Required With The Passage of Senate Bill No. 1137

Delays to foreclosure procedures for residential mortgage loans will be caused by Senate Bill No. 1137, which came into effect on July 8, 2008 and will stay into effect until January 1, 2013. Mortgagees, trustees, beneficiaries and authorized agents are now subject to several new communication requirements before beginning the foreclosure process. Banks and other lenders, for example, are now required to contact borrowers and explore options to avoid foreclosure at least 30 days prior to even recording a notice of default. The new requirements in Senate Bill No. 1137 are only applicable to residential mortgage loans for owner-occupied residences made between January 1, 2003 and December 31, 2007.

Stated Intent and Purpose of Senate Bill No. 1137

Senate Bill No. 1137 was enacted to address the rise in residential property foreclosure rates in California. The stated purpose of Senate Bill No. 1137 is to avoid unnecessary foreclosures of residential properties and to thereby stabilize California's statewide and regional economies and housing market.

Legal Impact of Senate Bill No. 1137

1. New Communication Requirements Prior to Recordation of Notice of Default

At least 30 days before recording a notice of default, a mortgagee, trustee, beneficiary or authorized agent shall contact the borrower in person or by phone, or satisfy due diligence requirements by trying to contact the borrower (e.g., by first-class letter, followed by a phone call on three separate occasions at different hours of the day, followed by a certified letter if no response to the first-class letter and phone calls), to assess the borrower's financial situation and explore options to avoid foreclosure. The mortgagee, trustee, beneficiary or authorized agent must advise the

borrower that he/she can request a subsequent meeting to assess the borrower's financial situation and explore options to avoid foreclosure. This meeting may occur in person or by telephone, and if requested, must be scheduled by the mortgagee, trustee, beneficiary or authorized agent to take place within 14 days of the initial contact. Either in the initial contact or the subsequent meeting, the mortgagee, trustee, beneficiary or authorized agent must provide the borrower with a toll-free number to a housing counseling agency certified by the United States Housing and Urban Development (HUD).

The notice of default shall include a specified declaration from the mortgagee, trustee, beneficiary or authorized agent that it has contacted the borrower, satisfied due diligence in trying to contact the borrower, or that the borrower has surrendered the property. If a notice of default was recorded before Senate Bill No. 1137 came into effect, then the mortgagee, trustee, beneficiary or authorized agent shall include, in the notice of sale, either a statement that the borrower was contacted to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure, or if no contact was made, a list of efforts made to make contact with the borrower.

A borrower may designate a HUD-certified agency, attorney or other advisor to discuss the borrower's financial situation and options to avoid foreclosure. At such designation, the mortgagee, trustee, beneficiary or authorized agent shall meet the same communication requirements as if dealing with the borrower directly.

In accordance with due diligence requirements to contact a borrower, the mortgagee, beneficiary, or authorized agent shall post on the homepage of its Internet Website, if it has one, a prominent link to the following information: (1) options available to borrowers

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who are unable to afford their mortgage payments but wish to avoid foreclosure, and advice on how to explore those options; (2) a list of financial documents borrowers should collect and be prepared to present when discussing options for avoiding foreclosure; (3) a toll-free telephone number to discuss options to avoid foreclosure with the mortgagee, beneficiary or authorized agent; and (4) the toll-free telephone number, provided by HUD, to direct borrowers to a HUD-certified housing counseling agency.

The mortgagee, trustee, beneficiary or authorized agent need not follow the communication requirements in Senate Bill No. 1137 if the borrower has surrendered the property, the borrower has contracted with an organization, person or entity whose primary business is advising people on how to extend the foreclosure process and avoid their contractual obligations, or if the borrower has filed for bankruptcy and the proceedings have not been finalized.

2. Additional Notice of Requirement

Upon posting a notice of sale, (a) a trustee or authorized agent shall post the following notice in English on the property to be sold, and (b) the mortgagee, trustee, beneficiary or authorized agent shall mail the following notice in English and Spanish, Chinese, Tagalog, Vietnamese or Korean, in an envelope addressed to the "Resident of property subject to foreclosure sale":

Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 60-day eviction notice. However, other laws may prohibit an eviction in this circumstance or provide you with a longer notice before eviction. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights you may have.

It shall be a crime to tear down a notice of sale

posted on a property within 72 hours of posting.

3. Buyer's Requirement to Maintain Property After Foreclosure Sale

The legal owner of residential property purchased at a foreclosure sale, or acquired through foreclosure under a mortgage or deed of trust, shall maintain proper care of the exterior of the property even if it is vacant. Failure to maintain the property may incur a civil fine of up to \$1000 per day. Should a government entity decide to impose a fine, it shall give notice of the conditions of violation and notice of the entity's intent to pursue a civil fine if the owner does not take action to correct the violation within 14 days, and complete the corrections within 30 days.

4. Termination of Tenancies on Property Sold in Foreclosure

A tenant or subtenant in possession of a rental housing unit at the time that the property is sold in foreclosure sale shall have 60 days' written notice to quit before the tenant or subtenant may be removed. The 60 days' written notice requirement to quit does not apply to those who remain in the property as a tenant, subtenant or occupant.