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SB-1471 Mortgages and deeds of trust: foreclosure.(2011-2012)

BILL START

AMENDED IN SENATE MARCH 29, 2012

Introduced by Senator DeSaulnier, Pavley
(Coauthor(s): Senator Hancock, Leno)

February 24, 2012

An act to amend Sections 2932.5 and 2934 of, to amend and repeal Section 2924 of, and to add Sections 2920.5, 2923.7, and 2924.9 to, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1471, as amended, DeSaulnier. Mortgages and deeds of trust: foreclosure.

(1) Existing law prescribes foreclosure procedures, including, among other things, procedures for recording a notice of default, recording a notice of sale, and conducting a foreclosure sale.

This bill would define a mortgage servicer, and would, commencing July 1, 2013, require a mortgage servicer to establish a single point of contact when a borrower on a residential mortgage or deed of trust is 60 or more days delinquent, has had a notice of default recorded, or is seeking a loan modification or other loss mitigation, as specified. The bill would impose various obligations on the single point of contact in connection with loan modification or other loss mitigation options.

(2) Existing law imposes various requirements that must be satisfied prior to exercising a power of sale under a mortgage or deed of trust, including, among other things, recording a notice of default.

This bill would prohibit an entity from recording a notice of default or otherwise initiating foreclosure procedures unless the entity is the actual holder of the beneficial interest under the deed of trust, and would prohibit an entity acting as agent from doing so without specific direction from the actual owner of the beneficial interest under the deed of trust.

(3) Existing law authorizes the recording by the county recorder of various documents.

This bill would provide that a document that contains information that was not verified for accuracy by the person or persons signing, attesting, or swearing to the accuracy of the document or statement is a robo-signed document. The bill would also authorize a borrower to obtain a postponement of a foreclosure sale until a new notice of default and a corrected version of the robo-signed document are recorded, as specified.

(4) Existing law provides that where the power to sell real property is given to a mortgagee or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests with any person who by assignment becomes entitled to payment of the money.

This bill would expand these provisions to include a power to sell real property given to a trustee or a beneficiary of a deed of trust in an instrument intended to secure the payment of money.

(5) Existing law authorizes any assignment of a mortgage or beneficial interest under a deed of trust to be recorded.

This bill would require any assignment of a mortgage or beneficial interest under a deed of trust to be recorded.

(6) The bill would repeal duplicate provisions of law.

(7) The bill would make a specified statement of legislative intent regarding appropriate remedies under the bill for violations of the bill's provisions.

~~Existing state and federal law regulate the terms and conditions of mortgages and deeds of trust secured by real property. Existing state law requires, upon a breach of the obligation of a mortgage or deed of trust secured by real property, that the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor, among other acts, prior to exercising a power of sale. Existing state law, until January 1, 2013, prohibits the filing of a notice of default on a mortgage or deed of trust, as specified, secured by owner-occupied real property, as defined, until 30 days after specified parties contact the borrower or 30 days after satisfying due diligence requirements in this regard. This bill would express the intent of the Legislature to enact legislation that would improve protections for homeowners who are subject to foreclosure.~~

DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: NO Local Program: NO

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 2920.5 is added to the Civil Code, to read:

2920.5.

For purposes of this article, "mortgage servicer" means a person or entity responsible for the day-to-day management of a mortgage loan account, including collecting and crediting periodic loan payments, managing any escrow account, or enforcing mortgage loan terms either as the holder of the loan note or on behalf of the holder of the loan note.

SEC. 2.

Section 2923.7 is added to the Civil Code, to read:

2923.7.

(a) If the borrower on a residential mortgage, where the property securing the mortgage or deed of trust is the primary residence of the borrower, is 60 or more days delinquent, has had a notice of default recorded against the property, or is seeking a loan modification or other loss mitigation option, the mortgage servicer shall establish a single point of contact (SPOC) for the borrower.

(b) The identity of and contact information for the SPOC shall be provided to the borrower no later than 10 business days after the 60th day of delinquency, the recordation of the notice of default, or the date the mortgage servicer receives notice that the borrower is seeking a loan modification or other loss mitigation option, whichever is sooner. The mortgage servicer shall provide updated contact information to the borrower if the designated SPOC is changed no later than five business days after the change.

(c) The SPOC shall be responsible for all of the following:

(1) Communicating the options available to the borrower, the actions the borrower must take to be considered for those options, and the status of the mortgage servicer's evaluation of the borrower for those options.

- (2) Coordinating receipt of all documents associated with loan modification or loss mitigation activities and notifying the borrower of any missing documents.
- (3) Maintaining and providing accurate information about the borrower's situation and current status in the loss mitigation process.
- (4) Ensuring that a borrower, who is not eligible for a federal Making Home Affordable (MHA) program, is considered for proprietary or other investor loss mitigation options.
- (5) Having access to individuals with the ability to stop foreclosure proceedings when necessary to comply with the MHA program or California law.
- (d) The SPCK shall remain assigned to the borrower's account until the mortgage servicer determines that all loss mitigation options have been exhausted, the borrower's account becomes current, or, in the case of a borrower in bankruptcy, the borrower has exhausted all loss mitigation options for which the borrower is potentially eligible and has applied.
- (e) The mortgage servicer shall post on its Internet Web site the average response time following a single point of contact's receipt of a borrower's inquiry regarding the foreclosure process or the status of any request for a loan modification, short sale, or other loss mitigation option.
- (f) The mortgage servicer shall allow the borrower to speak with a management or supervisory level employee if the borrower makes that request to an assigned single point of contact.
- (g) This section shall become operative July 1, 2013.

SEC. 3.

Section 2924 of the Civil Code, as amended by Section 1 of Chapter 150 of the Statutes of 2010, is amended to read:

2924.

- (a) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until all of the following apply:
 - (1) The trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default. That notice of default shall include all of the following:
 - (A) A statement identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property.
 - (B) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred.
 - (C) A statement setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default.
 - (D) If the default is curable pursuant to Section 2924c, the statement specified in paragraph (1) of subdivision (b) of Section 2924c.
 - (2) Not less than three months shall elapse from the filing of the notice of default.
 - (3) Except as provided in paragraph (4), after the lapse of the three months described in paragraph (2), the mortgagee, trustee, or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.

(4) Notwithstanding paragraph (3), the mortgagee, trustee, or other person authorized to take sale may file a notice of sale pursuant to Section 2924f up to five days before the lapse of the three-month period described in paragraph (2), provided that the date of sale is no earlier than three months and 20 days after the filing of the notice of default.

(5) An entity shall not record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the actual current holder of the beneficial interest under the deed of trust. An agent shall not record a notice of default or otherwise commence the foreclosure process without the specific direction of the actual owner of the beneficial interest under the deed of trust.

(b) In performing acts required by this article, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage. In performing the acts required by this article, a trustee shall not be subject to Title 1.6c (commencing with Section 1788) of Part 4.

(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(d) All of the following shall constitute privileged communications pursuant to Section 47:

(1) The mailing, publication, and delivery of notices as required by this section.

(2) Performance of the procedures set forth in this article.

(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.080 of the Code of Civil Procedure.

(e) There is a rebuttable presumption that the beneficiary actually knew of all unpaid loan payments on the obligation owed to the beneficiary and secured by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default shall not invalidate the notice of sale and the beneficiary shall not be precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

(f) This section shall become operative on January 1, 2011.

SEC. 4.

Section 2924 of the Civil Code, as amended by Section 2 of Chapter 180 of the Statutes of 2010, is repealed.

2924.

(a) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until all of the following apply:

(1) The trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default. That notice of default shall include all of the following:

(A) A statement identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property.

(B) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred.

(C) A statement setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default.

(D) If the default is curable pursuant to Section 2924c, the statement specified in paragraph (1) of subdivision (b) of Section 2924c.

(2) Not less than three months shall elapse from the filing of the notice of default.

(3) Except as provided in paragraph (4), after the lapse of the three months described in paragraph (2), the mortgagee, trustee, or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.

(4) Notwithstanding paragraph (3), the mortgagee, trustee, or other person authorized to take sale may file a notice of sale pursuant to Section 2924f up to five days before the lapse of the three month period described in paragraph (2), provided that the date of sale is no earlier than three months and 20 days after the filing of the notice of default.

(b) In performing acts required by this article, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage. In performing the acts required by this article, a trustee shall not be subject to Title 1.6a (commencing with Section 1788) of Part 4.

(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(d) All of the following shall constitute privileged communications pursuant to Section 47:

(1) The mailing, publication, and delivery of notices as required by this section.

(2) Performance of the procedures set forth in this article.

(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.060 of the Code of Civil Procedure.

(e) There is a rebuttable presumption that the beneficiary actually knew of all unpaid loan payments on the obligation owed to the beneficiary and secured by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default shall not invalidate the notice of sale and the beneficiary shall not be precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

(f) This section shall become operative on January 1, 2011.

SEC. 5.

Section 2924.9 is added to the Civil Code, to read:

2924.9.

(a) For purposes of this section, "robotically signed" means any document that contains information that was not verified for accuracy by the person or persons signing, attesting, or swearing to the accuracy of the document or statement. Evidence of a failure to verify may include, but is not limited to, inaccurate information contained within the document or statement. For purposes of this definition, multiple people may verify the document or statement so long as the document or statement specifies the portions verified by each signer.

(b) No party other than a bona fide third-party purchaser may raise any equitable defenses to any action to halt or set aside any foreclosure proceeding conducted with respect to a residential mortgage loan if a court of competent jurisdiction has found that any document pertaining to either the residential mortgage loan or the foreclosure was robotically signed.

SEC. 6.

Section 2932.5 of the Civil Code is amended to read:

2932.5.

Where a power to sell real property is given to a mortgagee, trustee, beneficiary of a deed of trust, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. The power of sale may be exercised by the assignee only if the assignment is duly acknowledged and recorded.

SEC. 7.

Section 2934 of the Civil Code is amended to read:

2934.

Any assignment of a mortgage and any assignment of the beneficial interest under a deed of trust may be recorded, and from the time the same is filed for record operates as constructive notice of the contents thereof to all persons; and any instrument by which any mortgage or deed of trust of, lien upon or interest in real property, (or by which any mortgage of, lien upon or interest in personal property a document evidencing or creating which is required or permitted by law to be recorded), is subordinated or waived as to priority may be recorded, and from the time the same is filed for record operates as constructive notice of the contents thereof, to all persons.

SEC. 8.

It is the intent of the Legislature that there be appropriate remedies under this act for violations of the act's provisions.

(3) Except as provided in paragraph (4), after the lapse of the three months described in paragraph (2), the mortgagee, trustee, or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.

(4) Notwithstanding paragraph (3), the mortgagee, trustee, or other person authorized to take sale may file a notice of sale pursuant to Section 2924f up to five days before the lapse of the three-month period described in paragraph (3), provided that the date of sale is no earlier than three months and 20 days after the filing of the notice of default.

(5) In performing acts required by this article, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage. In performing the acts required by this article, a trustee shall not be subject to Title 1.60 (commencing with Section 1788) of Part 4.

(6) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(7) All of the following shall constitute privileged communications pursuant to Section 47:

(1) The mailing, publication, and delivery of notices as required by this section.

(2) Performance of the procedures set forth in this article.

(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.060 of the Code of Civil Procedure.

(8) There is a rebuttable presumption that the beneficiary actually know of all unpaid loan payments on the obligation owed to the beneficiary and covered by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default shall not invalidate the notice of sale and the beneficiary shall not be precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

(9) This section shall become operative on January 1, 2011.

SEC. 5.

Section 2924.9 is added to the Civil Code, to read:

2924.9.

(a) For purposes of this section, "robosigned" means any document that contains information that was not verified for accuracy by the person or persons signing, attesting, or swearing to the accuracy of the document or statement. Evidence of a failure to verify may include, but is not limited to, inaccurate information contained within the document or statement. For purposes of this definition, multiple people may verify the document or statement so long as the document or statement specifies the portions verified by each signer.

(b) No party other than a bona fide third-party purchaser may raise any equitable defenses to any action to halt or set aside any foreclosure proceeding conducted with respect to a residential mortgage loan if a court of competent jurisdiction has found that any document pertaining to either the residential mortgage loan or the foreclosure was robosigned.

SEC. 6.

Section 2932.5 of the Civil Code is amended to read:

2932.5.

Where a power to sell real property is given to a mortgagee, trustee, beneficiary of a deed of trust, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. The power of sale may be exercised by the assignee only if the assignment is duly acknowledged and recorded.

SEC. 7.

Section 2934 of the Civil Code is amended to read:

2934.

Any assignment of a mortgage and any assignment of the beneficial interest under a deed of trust may shall be recorded, and from the time the same is filed for record operates as constructive notice of the contents thereof to all persons; and any instrument by which any mortgage or deed of trust of, lien upon or interest in real property, (or by which any mortgage of, lien upon or interest in personal property a document evidencing or creating which is required or permitted by law to be recorded), is subordinated or waived as to priority may be recorded, and from the time the same is filed for record operates as constructive notice of the contents thereof, to all persons.

SEC. 8.

It is the intent of the Legislature that there be appropriate remedies under this act for violations of the act's provisions.

SECTION 1.

It is the intent of the Legislature to enact legislation that would improve protections for homeowners who are subject to foreclosure.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner _____ a _____ of

a party to this action, and am authorized to make this verification for an on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on _____ 20____ at _____ California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature

ACKNOWLEDGEMENT OF RECEIPT OF DOCUMENT

(Other than Summons and Complaint)

Receive copy of document described as _____ on _____ 20____.

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of LOS ANGELES, State of California

I am over the age of 18 and not a party to the within action; my business address is: 700 N PACIFIC COAST HWY #201, REDONDO BEACH, CALIF. 90277

On JUN 27 2012 20____, I served the foregoing document described as PLAINTIFF'S BRIEF IN SUPPORT OF PROVE-UP DEFAULT JUDGMENT

on DEFENDANTS

In this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at:

addressed as follows: K&L GATES LLP

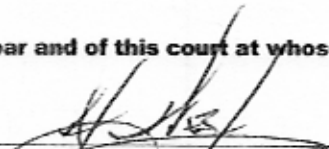
10100 SANTA MONICA BL 7TH FLR
LOS ANGELES, CA 90067

(BY MAIL) I caused such envelope and postage thereon fully prepaid to be placed in the United States mail. Executed on JUN 27 2012, 20____, at REDONDO BEACH, California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of addressee. Executed on _____, 20____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar and of this court at whose direction the these documents were served.



AL WEST Esq