

Residential Mortgage Loans: Foreclosure Procedures

This Act requires a mortgagee, trustee, beneficiary, or authorized agent to wait 30 days after contact is made with the borrower, or 30 days after satisfying due diligence requirements to contact the borrower, as specified, before filing a notice of default. The bill requires contact with the borrower to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. The Act requires the mortgagee, beneficiary, or authorized agent to advise the borrower that he or she has the right to request a subsequent meeting within 14 days, and to provide the borrower the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency.

This Act requires a notice of default to include a specified declaration from the mortgagee, beneficiary, or authorized agent regarding its contact with the borrower or that the borrower has surrendered the property. If a notice of default had already been filed prior to the enactment of this legislation, the bill instead requires the mortgagee, trustee, beneficiary, or authorized agent, as part of the notice of sale, to include a specified declaration regarding contact with the borrower. The bill authorizes a borrower to designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure. The contact and meeting requirements of these provisions would not apply if a borrower has surrendered the property or the borrower has contracted with an organization, as specified. The Act also requires specified mailings to the resident of a property that is the subject of a notice of sale, as specified. The legislation makes it a crime to tear down the notice of sale posted on a property within 72 hours of posting.

This Act requires a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. The bill authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. The bill requires a governmental entity that seeks to impose those fines and penalties to give notice of the claimed violation and an opportunity to correct the violation at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.

This bill gives a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure, 60 days to remove himself or herself from the property.

Submitted as:

California

Chapter 69 of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Foreclosing
2 Residential Mortgage Loans.”

3

4 Section 2. [*Restricting Filing Notices of Default.*]

5 (A) (1) A mortgagee, trustee, beneficiary, or authorized agent may not file a notice of
6 default pursuant to [insert citation] until [30] days after contact is made as required by paragraph
7 (2) or [30] days after satisfying the due diligence requirements as described in subdivision (G).

8 (2) A mortgagee, beneficiary, or authorized agent shall contact the borrower in
9 person or by telephone in order to assess the borrower's financial situation and explore options
10 for the borrower to avoid foreclosure. During the initial contact, the mortgagee, beneficiary, or
11 authorized agent shall advise the borrower that he or she has the right to request a subsequent
12 meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall schedule the
13 meeting to occur within [14] days. The assessment of the borrower's financial situation and
14 discussion of options may occur during the first contact, or at the subsequent meeting scheduled
15 for that purpose. In either case, the borrower shall be provided the toll-free telephone number
16 made available by the United States Department of Housing and Urban Development (HUD) to
17 find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

18 (B) A notice of default filed pursuant to [insert citation] shall include a declaration from
19 the mortgagee, beneficiary, or authorized agent that it has contacted the borrower, tried with due
20 diligence to contact the borrower as required by this section, or the borrower has surrendered the
21 property to the mortgagee, trustee, beneficiary, or authorized agent.

22 (C) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice
23 of default prior to the enactment of this section and did not subsequently file a notice of
24 rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the
25 notice of sale filed pursuant to [insert citation], include a declaration that either:

26 (1) States that the borrower was contacted to assess the borrower's financial
27 situation and to explore options for the borrower to avoid foreclosure.

28 (2) Lists the efforts made, if any, to contact the borrower in the event no contact
29 was made.

30 (D) A mortgagee's, beneficiary's, or authorized agent's loss mitigation personnel may
31 participate by telephone during any contact required by this section.

32 (E) For purposes of this section, a "borrower" shall include a mortgagor or trustor.

33 (F) A borrower may designate a HUD-certified housing counseling agency, attorney, or
34 other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's
35 behalf, options for the borrower to avoid foreclosure. That contact made at the direction of the
36 borrower shall satisfy the contact requirements of paragraph (2) of subdivision (A). Any loan
37 modification or workout plan offered at the meeting by the mortgagee, beneficiary, or authorized
38 agent is subject to approval by the borrower.

39 (G) A notice of default may be filed pursuant to [insert citation] when a mortgagee,
40 beneficiary, or authorized agent has not contacted a borrower as required by paragraph (2) of
41 subdivision (A) provided that the failure to contact the borrower occurred despite the due
42 diligence of the mortgagee, beneficiary, or authorized agent. For purposes of this section, "due
43 diligence" shall require and mean all of the following:

44 (1) A mortgagee, beneficiary, or authorized agent shall first attempt to contact a
45 borrower by sending a first-class letter that includes the toll-free telephone number made
46 available by HUD to find a HUD-certified housing counseling agency.

47 (2) (a) After the letter has been sent, the mortgagee, beneficiary, or authorized
48 agent shall attempt to contact the borrower by telephone at least [three] times at different hours
49 and on different days. Telephone calls shall be made to the primary telephone number on file.

50 (b) A mortgagee, beneficiary, or authorized agent may attempt to contact
51 a borrower using an automated system to dial borrowers, provided that, if the telephone call is

52 answered, the call is connected to a live representative of the mortgagee, beneficiary, or
53 authorized agent.

54 (c) A mortgagee, beneficiary, or authorized agent satisfies the telephone
55 contact requirements of this paragraph if it determines, after attempting contact pursuant to this
56 paragraph, that the borrower's primary telephone number and secondary telephone number or
57 numbers on file, if any, have been disconnected.

58 (3) If the borrower does not respond within [two weeks] after the telephone call
59 requirements of paragraph (2) have been satisfied, the mortgagee, beneficiary, or authorized
60 agent shall then send a certified letter, with return receipt requested.

61 (4) The mortgagee, beneficiary, or authorized agent shall provide a means for the
62 borrower to contact it in a timely manner, including a toll-free telephone number that will
63 provide access to a live representative during business hours.

64 (5) The mortgagee, beneficiary, or authorized agent has posted a prominent link
65 on the homepage of its Internet Web site, if any, to the following information:

66 (a) Options that may be available to borrowers who are unable to afford
67 their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers
68 advising them on steps to take to explore those options.

69 (b) A list of financial documents borrowers should collect and be prepared
70 to present to the mortgagee, beneficiary, or authorized agent when discussing options for
71 avoiding foreclosure.

72 (c) A toll-free telephone number for borrowers who wish to discuss
73 options for avoiding foreclosure with their mortgagee, beneficiary, or authorized agent.

74 (d) The toll-free telephone number made available by HUD to find a
75 HUD-certified housing counseling agency.

76 (H) Subdivisions (A), (C), and (G) shall not apply if any of the following occurs:

77 (1) The borrower has surrendered the property as evidenced by either a letter
78 confirming the surrender or delivery of the keys to the property to the mortgagee, trustee,
79 beneficiary, or authorized agent.

80 (2) The borrower has contracted with an organization, person, or entity whose
81 primary business is advising people who have decided to leave their homes on how to extend the
82 foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

83 (3) The borrower has filed for bankruptcy, and the proceedings have not been
84 finalized.

85 (I) This section shall apply only to loans made from [January 1, 2003, to December 31,
86 2007], inclusive, that are secured by residential real property and are for owner-occupied
87 residences. For purposes of this subdivision, "owner-occupied" means that the residence is the
88 principal residence of the borrower.

89 (J) This section shall remain in effect only until [January 1, 2013], and as of that date is
90 repealed, unless a later enacted statute, that is enacted before [January 1, 2013], deletes or
91 extends that date.

92

93 Section 3. [*Loan Modifications and Workout Plans.*]

94 (A) The [Legislature] finds and declares that any duty servicers may have to maximize
95 net present value under their pooling and servicing agreements is owed to all parties in a loan
96 pool, not to any particular parties, and that a servicer acts in the best interests of all parties if it
97 agrees to or implements a loan modification or workout plan for which both of the following
98 apply:

99 (1) The loan is in payment default, or payment default is reasonably foreseeable.

100 (2) Anticipated recovery under the loan modification or workout plan exceeds the
101 anticipated recovery through foreclosure on a net present value basis.

102 (B) It is the intent of the [Legislature] that the mortgagee, beneficiary, or authorized agent
103 offer the borrower a loan modification or workout plan if such a modification or plan is
104 consistent with its contractual or other authority.

105 (C) This section shall remain in effect only until [January 1, 2013], and as of that date is
106 repealed, unless a later enacted statute, that is enacted before [January 1, 2013], deletes or
107 extends that date.

108
109 Section 4. [*Notices to Residents of Properties Subject to Foreclosure.*]

110 (A) Upon posting a notice of sale pursuant to [insert citation], a trustee or authorized
111 agent shall also post the following notice, in the manner required for posting the notice of sale on
112 the property to be sold, and a mortgagee, trustee, beneficiary, or authorized agent shall mail, at
113 the same time in an envelope addressed to the “Resident of property subject to foreclosure sale”
114 the following notice in English and the languages described in [insert citation]:

115
116 “Foreclosure process has begun on this property, which may affect your right to
117 continue to live in this property. [Twenty days] or more after the date of this
118 notice, this property may be sold at foreclosure. If you are renting this property,
119 the new property owner may either give you a new lease or rental agreement or
120 provide you with a [60-day] eviction notice. However, other laws may prohibit an
121 eviction in this circumstance or provide you with a longer notice before eviction.
122 You may wish to contact a lawyer or your local legal aid or housing counseling
123 agency to discuss any rights you may have.”

124
125 (B) It shall be an infraction to tear down the notice described in subdivision (A) within
126 [72] hours of posting. Violators shall be subject to a fine of [one hundred dollars (\$100)].

127 (C) A state government entity shall make available translations of the notice described in
128 subdivision (A) which may be used by a mortgagee, trustee, beneficiary, or authorized agent to
129 satisfy the requirements of this section.

130 (D) This section shall only apply to loans secured by residential real property, and if the
131 billing address for the mortgage note is different than the property address.

132 (E) This section shall remain in effect only until [January 1, 2013], and as of that date is
133 repealed, unless a later enacted statute, that is enacted before [January 1, 2013], deletes or
134 extends that date.

135
136 Section 5. [*Requiring Legal Owners to Maintain Vacant Residential Property Purchased*
137 *at a Foreclosure Sale.*]

138 (A) (1) A legal owner shall maintain vacant residential property purchased by that
139 owner at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or
140 deed of trust. A governmental entity may impose a civil fine of up to [one thousand dollars
141 (\$1,000)] per day for a violation. If the governmental entity chooses to impose a fine pursuant to
142 this section, it shall give notice of the alleged violation, including a description of the conditions
143 that gave rise to the allegation, and notice of the entity’s intent to assess a civil fine if action to
144 correct the violation is not commenced within a period of not less than [14] days and completed
145 within a period of not less than [30] days. The notice shall be mailed to the address provided in
146 the deed or other instrument as specified in [insert citation], or, if none, to the return address
147 provided on the deed or other instrument.

148 (2) The governmental entity shall provide a period of not less than [30] days for
149 the legal owner to remedy the violation prior to imposing a civil fine and shall allow for a
150 hearing and opportunity to contest any fine imposed. In determining the amount of the fine, the
151 governmental entity shall take into consideration any timely and good faith efforts by the legal
152 owner to remedy the violation. The maximum civil fine authorized by this section is [one
153 thousand dollars (\$1,000)] for each day that the owner fails to maintain the property,
154 commencing on the day following the expiration of the period to remedy the violation
155 established by the governmental entity.

156 (3) Subject to the provisions of this section, a governmental entity may establish
157 different compliance periods for different conditions on the same property in the notice of
158 alleged violation mailed to the legal owner.

159 (B) For purposes of this section, “failure to maintain” means failure to care for the
160 exterior of the property, including, but not limited to, permitting excessive foliage growth that
161 diminishes the value of surrounding properties, failing to take action to prevent trespassers or
162 squatters from remaining on the property, or failing to take action to prevent mosquito larvae
163 from growing in standing water or other conditions that create a public nuisance.

164 (C) Notwithstanding subdivisions (A) and (B), a governmental entity may provide less
165 than [30] days’ notice to remedy a condition before imposing a civil fine if the entity determines
166 that a specific condition of the property threatens public health or safety and provided that notice
167 of that determination and time for compliance is given.

168 (D) Fines and penalties collected pursuant to this section shall be directed to local
169 nuisance abatement programs.

170 (E) A governmental entity may not impose fines on a legal owner under both this section
171 and a local ordinance.

172 (F) These provisions shall not preempt any local ordinance.

173 (G) This section shall only apply to residential real property.

174 (H) The rights and remedies provided in this section are cumulative and in addition to
175 any other rights and remedies provided by law.

176 (I) This section shall remain in effect only until [January 1, 2013], and as of that date is
177 repealed, unless a later enacted statute, that is enacted before [January 1, 2013], deletes or
178 extends that date.

179
180 Section 6. [*Notice to Quit to Tenants or Subtenants in Possession of Rental Housing*
181 *That is Sold in Foreclosure.*]

182 (A) Notwithstanding [insert citation], a tenant or subtenant in possession of a rental
183 housing unit at the time the property is sold in foreclosure shall be given [60] days’ written
184 notice to quit pursuant to [insert citation] before the tenant or subtenant may be removed from
185 the property as prescribed in this Act.

186 (B) This section shall not apply if any party to the note remains in the property as a
187 tenant, subtenant, or occupant.

188 (C) This section shall remain in effect only until [January 1, 2013], and as of that date is
189 repealed, unless a later enacted statute, that is enacted before [January 1, 2013], deletes or
190 extends that date.

191
192 Section 7. [*Impact on Local Eviction Ordinances.*] Nothing in this Act is intended to
193 affect any local just-cause eviction ordinance. This Act does not, and shall not be construed to,
194 affect the authority of a public entity that otherwise exists to regulate or monitor the basis for
195 eviction.

196	
197	Section 8. [<i>Severability.</i>] [Insert severability clause.]
198	
199	Section 9. [<i>Repealer.</i>] [Insert repealer clause.]
200	
201	Section 10. [<i>Effective Date.</i>] [Insert effective date.]