

HARRIET B. ALEXSON

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WHAT'S NEW IN REAL ESTATE FINANCE LAW

By: Harriet B. Alexson (949.250.9664)
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California Civil Code Section 2923.52 has been enacted to apply to residential mortgage loans. Under Section 2923.52(a), the loan was recorded during the period January 1, 2003 – January 1, 2008. Under Subsection (a)(2), the loan, at issue, is a first mortgage or deed of trust that the property secures. A lender may not file a notice of default until thirty (30) days after contact is made with the borrower as required, or thirty (30) days after satisfying the “due diligence requirements” to attempt to contact the borrower. The lender “shall contact the borrower in person or by telephone in order to access the borrower’s financial situation and explore options for the borrower to avoid foreclosure.” During this initial contact, the lender is also required to advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the subsequent meeting shall occur within fourteen (14) days. In addition, the lender is required to provide a toll-free number made available by the U.S. Department of Housing and Urban Authority to find a HUD-certified housing counseling agency. (Cal. Civ. Code §2923.5(a)(1) and (a)(2).) A Notice of Default filed pursuant to Civil Code Section 2924 shall include a declaration from the lender that it has contacted the borrower, or tried with due diligence (as defined in the statute) to contact the borrower. (Cal. Civ. Code §2923.5(b).)

The “California Foreclosure Prevention Act” (Cal. Civ. Code §2923.52-2923.55) (the “Foreclosure Act”) was effective June 15, 2009 and adds an additional ninety (90) days to the existing three (3) month notice period required to be given between the recording of the Notice of Default and the Notice of Sale of the property, unless the lender meets the requirements for an exemption from the law. (Cal. Civ. Code §2923.52(a).) The law exempts, loans of a mortgage loan servicer if the mortgage loan servicer applies to the commissioner for an exemption indicating that it has implemented a loan modification program with specified features and the commissioner concludes that the program meets specified requirements. (Cal. Civ. Code §2923.53(a).)

The Foreclosure Act requires that the Notice of Sale include a declaration from the mortgage loan servicer regarding the issuance of a temporary or final order of exemption. (Cal. Civ. Code § 2923.54) The law further provides that a person who violates the provisions of the Act is deemed to have violated his or her license. (Cal. Civ. Code §2923.53(h).) The law does not expressly provide the penalties to the licensee if a violation occurs. The law expressly provides that the failure to comply with the Foreclosure Act does not invalidate a sale that is otherwise valid under Cal.Civ. Code §2924f. (Cal. Civ. Code §2923.54(b).)

On July 8, 2008, California’s legislature enacted statutes intended to protect tenants who occupy properties subject to foreclosure. The new law extends the time period tenants have to vacate property subject to foreclosure. Under prior law, tenants were required to receive thirty (30) days’ notice prior to initiation of eviction proceedings on the foreclosed property. Section 1161(b) of the Code of Civil

Procedure now provides that “a tenant or subtenant of a rental housing unit at the time the property is sold in foreclosure shall be given sixty (60) days’ written notice to quit pursuant to Section 1162 before the tenant or subtenant may be removed from the property.” The section does not apply if any party to the note remains in the property as a tenant or subtenant.

Recent federal legislation has also been enacted which extends the time period of notice to a tenant, in a property being foreclosed, to ninety (90) days, called the “Protecting Tenants at Foreclosure Act.” Under this Federal law, tenants must be given at least ninety (90) days’ notice before they have to vacate a property based on foreclosure of the property. Moreover, if the tenant is a “bona fide” tenant with a lease entered into before the notice of foreclosure, the tenant has the right to occupy the premises until the end of the remaining term of the lease, unless the property is sold to a purchaser who will occupy the unit as a primary residence.

Actual resolution of legal issues depends upon many factors including variations of fact and state laws. This article is not intended to provide legal advice on specific subjects but rather to offer insight into legal developments and issues. Consult with legal counsel before taking action on matters covered in this article. Copyright 2008 Harriet B. Alexson. All rights reserved.