

THE FORECLOSURE PROCESS AND NEW PRE-FORECLOSURE OBLIGATIONS OF LENDERS

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A new law that became effective as of July 8, 2008, creates a prerequisite to a lender declaring a default under certain home mortgages made in California.

Under Civil Code sections 2924 and 2924a-2924g, which are the pre-existing law establishing the procedures by which a California lender can seek to foreclose under a deed of trust, a notice of default must be recorded at least 90 days before the lender or its trustee under the deed of trust can give a notice of sale. The notice of sale must be given at least 20 days before foreclosure can be accomplished after a default in payment or other default has occurred.

The new law, Civil Code section 2923.5, adds to the time before a foreclosure sale can take place against a principal place of residence by requiring that, before a lender can record a notice of default, the lender must first contact or make diligent attempts to contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. The purpose of the law is to make sure that lenders actually discuss options for avoiding foreclosure before they seek to sell a person's home.

There are certain statutory exceptions built into the new law, and the obligation of the lender only applies to loans made between January 1, 2003 and December 31, 2007 that are secured by *owner-occupied principal residences*. However, the new law does add time to the foreclosure process on an owner-occupied home. Moreover, the new law can be an important tool for borrowers to prevent, or at least delay, a foreclosure process on an owner-occupied home. Moreover, the new law can be an important tool for borrowers to prevent, or at least delay, a foreclosure sale where the lender has failed to comply with the law. In one recent case, a lender tried to avoid its obligation to communicate with a borrower by falsely claiming that the property was not owner-occupied. After the borrower contacted us, we notified the trustee under the deed of trust that the property was, in fact, owner-occupied. The notice of default was immediately rescinded, the lender was required to comply with its obligations to discuss options before re-starting the foreclosure process, and foreclosure was delayed by at least five months (making the time before the lender could foreclose at least nine months after the alleged payment default).

The new law is just one of the things that should be investigated on behalf of a homeowner who faces the potentially devastating loss of his or her home. Competent legal counsel can assist a homeowner in understanding his or her rights, and in taking steps to protect the homeowner.

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