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AMENDED IN SENATE APRIL 16, 2008
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SENATE BILL

No. 1137

Introduced by Senators Perata, Corbett, and Machado

(Principal coauthor: ~~Assembly Member Lieu~~ *coauthors: Assembly Members Bass and Lieu*)

(Coauthors: Senators Calderon, Cedillo, Ducheny, Migden, Ridley-Thomas, Romero, Scott, and Wiggins)

(Coauthors: Assembly Members Arambula, Berg, Brownley, Caballero, Carter, Coto, DeSaulnier, Fuentes, Hancock, Hayashi, Hernandez, Jones, Nava, Parra, Ruskin, Torrico, and Wolk)

January 31, 2008

An act to add and repeal Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to add and repeal Section 1161b of the Code of Civil Procedure, relating to mortgages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1137, as amended, Perata. Residential mortgage loans: foreclosure procedures.

(1) Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default, and to mail the notice of default to the mortgagor or trustor. Existing law requires the notice to contain specified statements, including, but not limited to, those related to the mortgagor's or trustor's legal rights, as specified. Existing law also requires that the notice of sale in the case of default be posted on the property, as specified.

Until January 1, 2013, and as applied to residential mortgage loans made from January 1, 2003, to December 31, 2007, inclusive, that are for owner-occupied residences, this bill would, among other things, require 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 would require contact with the borrower, as defined, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. The bill would require 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. The bill would require the 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 act, the bill would instead require 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 would authorize 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 bill would also require specified mailings to the resident of a property that is the subject of a notice of sale, as specified. In addition, the bill would make it a crime to tear

down the notice of sale posted on a property within 72 hours of posting, thereby imposing a state-mandated local program.

Until January 1, 2013, this bill would require 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 would authorize 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 would require 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.

(2) Existing law governs the termination of tenancies and generally requires 30 days’ notice of the termination thereof, except under specified circumstances. Existing law also establishes the criteria for determining when a tenant is guilty of unlawful detainer.

Until January 1, 2013, this bill would give 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, as specified.

(3) This bill would set forth specified findings and declarations and intent provisions with regard to the above, and would provide that its provisions are severable.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California is facing an unprecedented threat to its state
- 4 economy and local economies because of skyrocketing residential
- 5 property foreclosure rates in California. Residential property

1 foreclosures increased sevenfold from 2006 to 2007. In 2007, more
2 than 84,375 properties were lost to foreclosure in California, and
3 254,824 loans went into default, the first step in the foreclosure
4 process.

5 (b) High foreclosure rates have adversely affected property
6 values in California, and will have *even* greater adverse
7 consequences as foreclosure rates continue to rise. According to
8 statistics released by the HOPE NOW Alliance, the number of
9 completed California foreclosure sales in 2007 increased almost
10 threefold from 1,902 in the first quarter to 5,574 in the fourth
11 quarter of that year. Those same statistics report that 10,556
12 foreclosure sales, almost double the number for the prior quarter,
13 were completed just in the month of January 2008. More
14 foreclosures means less money for schools, public safety, and other
15 key services.

16 (c) Under specified circumstances, mortgage lenders and
17 servicers are authorized under their pooling and servicing
18 agreements to modify mortgage loans when the modification is in
19 the best interest of investors. Generally, that modification may be
20 deemed to be in the best interest of investors when the net present
21 value of the income stream of the modified loan is greater than the
22 amount that would be recovered through the disposition of the real
23 property security through a foreclosure sale.

24 (d) It is essential to the economic health of California for the
25 state to ameliorate the deleterious effects on the state economy
26 and local economies and the California housing market that will
27 result from the continued foreclosures of residential properties in
28 unprecedented numbers by modifying the foreclosure process to
29 require mortgagees, beneficiaries, or authorized agents to contact
30 borrowers and explore options that could avoid foreclosure. These
31 changes in accessing the state's foreclosure process are essential
32 to ensure that the process does not exacerbate the current crisis by
33 adding more foreclosures to the glut of foreclosed properties
34 already on the market when a foreclosure could have been avoided.
35 Those additional foreclosures will further destabilize the housing
36 market with significant, corresponding deleterious effects on the
37 local and state economy.

38 (e) According to a survey released by the Federal Home Loan
39 Mortgage Corporation (Freddie Mac) on January 31, 2008, 57

1 percent of the nation’s late-paying borrowers do not know their
2 lenders may offer alternatives to help them avoid foreclosure.

3 (f) As reflected in recent government and industry-led efforts
4 to help troubled borrowers, the mortgage foreclosure crisis impacts
5 borrowers not only in nontraditional loans, but also many borrowers
6 in conventional loans.

7 (g) This act is necessary to avoid unnecessary foreclosures of
8 residential properties and thereby provide stability to California’s
9 statewide and regional economies and housing market by requiring
10 early contact and communications between mortgagees,
11 beneficiaries, or authorized agents and specified borrowers to
12 explore options that could avoid foreclosure and by facilitating
13 the modification or restructuring of loans in appropriate
14 circumstances.

15 SEC. 2. Section 2923.5 is added to the Civil Code, to read:

16 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
17 agent may not file a notice of default pursuant to Section 2924
18 until 30 days after contact is made as required by paragraph (2) or
19 30 days after satisfying the due diligence requirements as described
20 in subdivision (g).

21 (2) A mortgagee, beneficiary, or authorized agent shall contact
22 the borrower in person or by telephone in order to assess the
23 borrower’s financial situation and explore options for the borrower
24 to avoid foreclosure. During the initial contact, the mortgagee,
25 beneficiary, or authorized agent shall advise the borrower that he
26 or she has the right to request a subsequent meeting and, if
27 requested, the mortgagee, beneficiary, or authorized agent shall
28 schedule the meeting to occur within 14 days. The assessment of
29 the borrower’s financial situation and discussion of options may
30 occur during the first contact, or at the subsequent meeting
31 scheduled for that purpose. In either case, the borrower shall be
32 provided the toll-free telephone number made available by the
33 United States Department of Housing and Urban Development
34 (HUD) to find a HUD-certified housing counseling agency. Any
35 meeting may occur telephonically.

36 (b) A notice of default filed pursuant to Section 2924 shall
37 include a declaration from the mortgagee, beneficiary, or authorized
38 agent that it has contacted the borrower, tried with due diligence
39 to contact the borrower as required by this section, or the borrower

1 has surrendered the property to the mortgagee, trustee, beneficiary,
2 or authorized agent.

3 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
4 already filed the notice of default prior to the enactment of this
5 section and did not subsequently file a notice of rescission, then
6 the mortgagee, trustee, beneficiary, or authorized agent shall, as
7 part of the notice of sale filed pursuant to Section 2924f, include
8 a declaration that either:

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

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

14 (d) A mortgagee's, beneficiary's, or authorized agent's loss
15 mitigation personnel may participate by telephone during any
16 contact required by this section.

17 (e) For purposes of this section, a "borrower" shall include a
18 mortgagor or trustor.

19 (f) A borrower may designate a HUD-certified housing
20 counseling agency, attorney, or other advisor to discuss with the
21 mortgagee, beneficiary, or authorized agent, on the borrower's
22 behalf, options for the borrower to avoid foreclosure. That contact
23 made at the direction of the borrower shall satisfy the contact
24 requirements of paragraph (2) of subdivision (a). Any loan
25 modification or workout plan offered at the meeting by the
26 mortgagee, beneficiary, or authorized agent is subject to approval
27 by the borrower.

28 (g) A notice of default may be filed pursuant to Section 2924
29 when a mortgagee, beneficiary, or authorized agent has not
30 contacted a borrower as required by paragraph (2) of subdivision
31 (a) provided that the failure to contact the borrower occurred
32 despite the due diligence of the mortgagee, beneficiary, or
33 authorized agent. For purposes of this section, "due diligence"
34 shall require and mean all of the following:

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

39 (2) (A) After the letter has been sent, the mortgagee,
40 beneficiary, or authorized agent shall attempt to contact the

1 borrower by telephone at least three times at different hours and
2 on different days. Telephone calls shall be made to the primary
3 telephone number on file.

4 (B) A mortgagee, beneficiary, or authorized agent may attempt
5 to contact a borrower using an automated system to dial borrowers,
6 provided that, if the telephone call is answered, the call is
7 connected to a live representative of the mortgagee, beneficiary,
8 or authorized agent.

9 (C) A mortgagee, beneficiary, or authorized agent satisfies the
10 telephone contact requirements of this paragraph if it determines,
11 after attempting contact pursuant to this paragraph, that the
12 borrower's primary telephone number and secondary telephone
13 number or numbers on file, if any, have been disconnected.

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

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

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

25 (A) Options that may be available to borrowers who are unable
26 to afford their mortgage payments and who wish to avoid
27 foreclosure, and instructions to borrowers advising them on steps
28 to take to explore those options.

29 (B) A list of financial documents borrowers should collect and
30 be prepared to present to the mortgagee, beneficiary, or authorized
31 agent when discussing options for avoiding foreclosure.

32 (C) A toll-free telephone number for borrowers who wish to
33 discuss options for avoiding foreclosure with their mortgagee,
34 beneficiary, or authorized agent.

35 (D) The toll-free telephone number made available by HUD to
36 find a HUD-certified housing counseling agency.

37 (h) Subdivisions (a), (c), and (g) shall not apply if any of the
38 following occurs:

39 (1) The borrower has surrendered the property as evidenced by
40 either a letter confirming the surrender or delivery of the keys to

1 the property to the mortgagee, trustee, beneficiary, or authorized
2 agent.

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

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

10 (i) This section shall apply only to loans made from January 1,
11 2003, to December 31, 2007, inclusive, that are secured by
12 residential real property and are for owner-occupied residences.
13 For purposes of this subdivision, "owner-occupied" means that
14 the residence is the principal residence of the borrower.

15 (j) This section shall remain in effect only until January 1, 2013,
16 and as of that date is repealed, unless a later enacted statute, that
17 is enacted before January 1, 2013, deletes or extends that date.

18 SEC. 3. Section 2923.6 is added to the Civil Code, to read:

19 2923.6. (a) The Legislature finds and declares that any duty
20 servicers may have to maximize net present value under their
21 pooling and servicing agreements is owed to all parties in a loan
22 pool, not to any particular parties, and that a servicer acts in the
23 best interests of all parties if it agrees to or implements a loan
24 modification or workout plan for which both of the following
25 apply:

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

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

31 (b) It is the intent of the Legislature that the mortgagee,
32 beneficiary, or authorized agent offer the borrower a loan
33 modification or workout plan if such a modification or plan is
34 consistent with its contractual or other authority.

35 (c) This section shall remain in effect only until January 1, 2013,
36 and as of that date is repealed, unless a later enacted statute, that
37 is enacted before January 1, 2013, deletes or extends that date.

38 SEC. 4. Section 2924.8 is added to the Civil Code, to read:

39 2924.8. (a) Upon posting a notice of sale pursuant to Section
40 2924f, a trustee or authorized agent shall also post the following

1 notice, in the manner required for posting the notice of sale on the
2 property to be sold, and a mortgagee, trustee, beneficiary, or
3 authorized agent shall mail, at the same time in an envelope
4 addressed to the “Resident of property subject to foreclosure sale”
5 the following notice in English and the languages described in
6 Section 1632: “Foreclosure process has begun on this property,
7 which may affect your right to continue to live in this property.
8 Twenty days or more after the date of this notice, this property
9 may be sold at foreclosure. If you are renting this property, the
10 new property owner may either give you a new lease or rental
11 agreement or provide you with a 60-day eviction notice. However,
12 other laws may prohibit an eviction in this circumstance or provide
13 you with a longer notice before eviction. You may wish to contact
14 a lawyer or your local legal aid or housing counseling agency to
15 discuss any rights you may have.”

16 (b) It shall be an infraction to tear down the notice described in
17 subdivision (a) within 72 hours of posting. Violators shall be
18 subject to a fine of one hundred dollars (\$100).

19 (c) A state government entity shall make available translations
20 of the notice described in subdivision (a) which may be used by a
21 mortgagee, trustee, beneficiary, or authorized agent to satisfy the
22 requirements of this section.

23 (d) This section shall only apply to loans secured by residential
24 real property, and if the billing address for the mortgage note is
25 different than the property address.

26 (e) This section shall remain in effect only until January 1, 2013,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2013, deletes or extends that date.

29 SEC. 5. Section 2929.3 is added to the Civil Code, to read:

30 2929.3. (a) (1) A legal owner shall maintain vacant residential
31 property purchased by that owner at a foreclosure sale, or acquired
32 by that owner through foreclosure under a mortgage or deed of
33 trust. A governmental entity may impose a civil fine of up to one
34 thousand dollars (\$1,000) per day for a violation. If the
35 governmental entity chooses to impose a fine pursuant to this
36 section, it shall give notice of the alleged violation, including a
37 description of the conditions that gave rise to the allegation, and
38 notice of the entity’s intent to assess a civil fine if action to correct
39 the violation is not commenced within a period of not less than 14
40 days and completed within a period of not less than 30 days. The

1 notice shall be mailed to the address provided in the deed or other
2 instrument as specified in subdivision (a) of Section 27321.5 of
3 the Government Code, or, if none, to the return address provided
4 on the deed or other instrument.

5 (2) The governmental entity shall provide a period of not less
6 than 30 days for the legal owner to remedy the violation prior to
7 imposing a civil fine and shall allow for a hearing and opportunity
8 to contest any fine imposed. In determining the amount of the fine,
9 the governmental entity shall take into consideration any timely
10 and good faith efforts by the legal owner to remedy the violation.
11 The maximum civil fine authorized by this section is one thousand
12 dollars (\$1,000) for each day that the owner fails to maintain the
13 property, commencing on the day following the expiration of the
14 period to remedy the violation established by the governmental
15 entity.

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

20 (b) For purposes of this section, "failure to maintain" means
21 failure to care for the exterior of the property, including, but not
22 limited to, permitting excessive foliage growth that diminishes the
23 value of surrounding properties, failing to take action to prevent
24 trespassers or squatters from remaining on the property, or failing
25 to take action to prevent mosquito larvae from growing in standing
26 water or other conditions that create a public nuisance.

27 (c) Notwithstanding subdivisions (a) and (b), a governmental
28 entity may provide less than 30 days' notice to remedy a condition
29 before imposing a civil fine if the entity determines that a specific
30 condition of the property threatens public health or safety and
31 provided that notice of that determination and time for compliance
32 is given.

33 (d) Fines and penalties collected pursuant to this section shall
34 be directed to local nuisance abatement programs.

35 (e) A governmental entity may not impose fines on a legal owner
36 under both this section and a local ordinance.

37 (f) These provisions shall not preempt any local ordinance.

38 (g) This section shall only apply to residential real property.

1 (h) The rights and remedies provided in this section are
2 cumulative and in addition to any other rights and remedies
3 provided by law.

4 (i) This section shall remain in effect only until January 1, 2013,
5 and as of that date is repealed, unless a later enacted statute, that
6 is enacted before January 1, 2013, deletes or extends that date.

7 SEC. 6. Section 1161b is added to the Code of Civil Procedure,
8 to read:

9 1161b. (a) Notwithstanding Section 1161a, a tenant or
10 subtenant in possession of a rental housing unit at the time the
11 property is sold in foreclosure shall be given 60 days' written
12 notice to quit pursuant to Section 1162 before the tenant or
13 subtenant may be removed from the property as prescribed in this
14 chapter.

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

17 (c) This section shall remain in effect only until January 1, 2013,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2013, deletes or extends that date.

20 SEC. 7. Nothing in this act is intended to affect any local
21 just-cause eviction ordinance. This act does not, and shall not be
22 construed to, affect the authority of a public entity that otherwise
23 exists to regulate or monitor the basis for eviction.

24 SEC. 8. The provisions of this act are severable. If any
25 provision of this act or its application is held invalid, that invalidity
26 shall not affect other provisions or applications that can be given
27 effect without the invalid provision or application.

28 SEC. 9. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

37 SEC. 10. (a) This act is an urgency statute necessary for the
38 immediate preservation of the public peace, health, or safety within
39 the meaning of Article IV of the Constitution and shall go into
40 immediate effect. The facts constituting the necessity are:

1 In order to stabilize and protect the state and local economies
2 and housing market at the earliest possible time, it is necessary for
3 this act to take effect immediately.
4 (b) However, the provisions of Section 2 of this act, which adds
5 Section 2923.5 to the Civil Code, and Section 4 of this act, which
6 adds Section 2924.8 to the Civil Code, shall become operative 60
7 days after the effective date of this act.