

California Foreclosure Prevention Act

New Law Extends Foreclosure Time Frames



Major legislation extending the foreclosure period by 90 days was signed by Governor Schwarzenegger on February 20th. It is entitled the California Foreclosure Prevention Act. Assembly Bill 7 of the Second Extraordinary Session (ABX2 7) was designed to address the foreclosure problem in California. This new law will take effect on May 21, 2009.

The new law extends the time period before the filing of a notice of sale by 90 days beyond the current three month period following the filing of a notice of default. The extended time period applies to owner-occupied homes where the first loan was recorded between January 1, 2003 and January 1, 2008. Important for title insurers is a provision in the bill that provides that the failure to comply with the new requirements does not invalidate any sale that would otherwise be valid under Civil Code Section 2924f.

A mortgage loan servicer may obtain a temporary or final order of exemption from the additional 90-day time period if the servicer has a comprehensive loan modification program. The notice of sale must include a declaration from the mortgage loan servicer as to whether an exemption was obtained and stating whether the new time frame for giving notice of sale does not apply.

In order to qualify for an exemption, a comprehensive loan modification program must include all of the following features:

1. Intended to keep borrowers in their homes when the anticipated recover under a loan modification exceeds the recovery through foreclosure, on a net present value basis.
2. Targets a debt-to-income ratio of 38 percent or less, on an aggregate basis in the program.
3. Includes some combination of the following features:
 - (a) interest rate reduction for at least five years;
 - (b) extension of loan term to no more than 40 years;
 - (c) deferral of some portion of the unpaid principal

balance; (d) reduction of principal; (e) compliance with a federally mandated loan modification program; or (f) other factors the commissioner determines are appropriate.

4. Seeks to achieve long-term sustainability for the borrower when determining a loan modification solution.

State-regulated servicers desiring an exemption must apply for one form their primary regulator; federally regulated servicers must apply to the Commissioner of the Department of Corporations. Upon receiving an application for exemption, the respective commissioner must make a final determination, within 30 days, on whether the application meets the above criteria.

A temporary order of exemption is issued immediately upon receipt of an initial application and remains in effect until either a final order is issued or 30 days after the date of denial. If an application is denied, the applicant may reapply for an exemption. The Secretary of Business, Transportation and Housing must maintain on an internet web site a list of the final exemptions orders and a link to sites describing the loan modification programs.

The following loans are exempted from the 90-day extension:

1. Loans made, purchased, serviced, or used as collateral by a California state or local housing finance agency.
2. Loans where the borrower has surrendered the property, contracted with an organization regarding how to extend the foreclosure process, or filed for bankruptcy and the case has not been closed or dismissed.

The provisions of this new law are repealed on January 1, 2011 unless the Legislature extends them.

Source: CLTA News Express and ABX2 7

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