

NEW CHANGE TO REQUIRED LANGUAGE FOR FORECLOSURE NOTICES UNDER CALIFORNIA CIVIL CODE § 2924C

*October 14, 2011 by **Sheppard Mullin***

Effective as of January 1, 2011, the language prescribed for all notices of default recorded pursuant to Section 2924 et seq. of the California Civil Code has changed. Despite the fact that this change became effective as of the beginning of this year, some foreclosure trustees are still using old forms that do not comply with current California law. Accordingly, lenders should be diligent in reviewing their foreclosure notices to ensure compliance with current requirements.

Under Section 2924c(b)(1) of the California Civil Code, the text of such notices of default must begin with the following statement:

"IMPORTANT NOTICE [14-point boldface type if printed or in capital letters if typed]

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, [14-point boldface type if printed or in capital letters if typed] and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is _____ as of _____ (Date) and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than three months after this notice of default is recorded) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

_____ (Name of beneficiary or mortgagee)

_____ (Mailing address)

_____ (Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** [14-point boldface type if printed or in capital letters if typed]"

The new changes are noted in bold in the above excerpt of the statute. The phrase "approximately 90 days" replaced the phrase "three months" in the first paragraph of the prior version of the statute. The phrase "three months after this notice of default is recorded" replaced the phrase "the end of the three-month period stated above" in the fourth paragraph of the prior version of the statute. Section 2924c(b)(1) also contains other requirements for such notices, including that such notices must appear in at least 12-point boldface type unless otherwise specified in the statute.

California has many other requirements for foreclosure of a deed of trust or mortgage on real property in California. Parties to a foreclosure should seek the counsel of an experienced foreclosure attorney to ensure compliance with all applicable requirements.

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