

Summary of Possible Language

BORROWER NOTICES

- 1) Requires a notice of default (NOD) to include a declaration of the following:
 - a) The borrower is not a service member, or dependent of a service member who is entitled to the benefits of the Servicemembers Civil Relief Act (SCRA);
 - b) The mortgagee, beneficiary, or authorized agent is in possession of the note and mortgage or deed of trust, and evidence of its right to foreclose including documentation of any assignments and endorsements of the mortgage note or deed of trust. This evidence must be attached to or specifically described in the declaration. If proof is not attached, then a separate declaration is required signed by an individual having personal knowledge of the facts stated within the declaration, and which states all of the following:
 - i) Facts sufficient to demonstrate the foreclosing party's right to enforce the note;
 - ii) A statement that the person is unable to obtain possession of the note, if that is the case, as well as, a description of the efforts made to obtain the note; and,
 - iii) A description of the terms of the note and any riders attached thereto, including the date of execution, parties to the note, amount of the loan, term of the loan, initial interest rate and expiration date of interest-only period, if applicable.
- 2) Provides for the following borrower notices:
 - a) At least 14 days prior to the recordation of a NOD, a mortgagee, beneficiary or authorized agent must provide a written notice containing the following:
 - i) A statement that provides the facts supporting the right of the mortgagee, beneficiary or authorized agent to foreclose;
 - ii) Notification that the borrower may receive, upon written request:
 - (1) Copy of the most recent payment history;
 - (2) Copy of the borrower's loan note, and copies of any assignments of the note and the name of the investor that holds the borrower's loan note;
 - iii) An itemized account summary that includes:
 - (1) Total amount needed to bring the account current;
 - (2) Date through which the loan obligation is paid current;

- (3) Date of last full payment;
 - (4) The current interest rate in effect for the loan;
 - (5) The date on which the interest rate may adjust or reset;
 - (6) The amount of any prepayment penalties;
 - (7) Description of any late payment fees.
 - (8) Contact information for any assigned single point of contact (SPOC);
 - (9) Statement concerning the borrower's rights if they are a servicemember;
 - (10) A statement outlining the loss mitigation efforts that have already been undertaken; and,
 - (11) The toll-free telephone number for the Office of Homeowner Protection (OHP).
- b) Within five calendar days after recordation of a NOD, the borrower shall receive written communication of the following:
- i) The borrower can still be evaluated for alternatives to foreclosure;
 - ii) Whether an application is required to be submitted in order for the borrower to be considered for a foreclosure prevention alternative;
 - iii) The process and steps by which a borrower may obtain an application for a loan modification or any foreclosure prevention alternative.

DUAL TRACK

- 3) Specifies that if a mortgagee, trustee, beneficiary, or authorized agent had already filed the NOD prior to January 1, 2013 (enactment date), and did not file a notice of rescission, then they shall include a declaration with the NOD that states the following:
- a) That 60 days prior to the recordation of the NOD, written communication was sent to the borrower that included:
 - i) The borrower can still be evaluated for alternatives to foreclosure;
 - ii) Whether an application must be submitted by the borrower in order to be considered for a foreclosure prevention alternative;
 - iii) The means and process by which a borrower may obtain an application for a loan modification or any foreclosure prevention alternative and the deadlines for any

submission.

- b) The efforts made, if any, to contact the borrower in the event no contact was made.
- 4) Provides that if a borrower has submitted an application for a loan modification within 120 days of delinquency, and before a NOD has been recorded, a NOD shall not be recorded while the loan modification application is pending. Under this scenario, the NOD may not be filed until either:
 - a) The borrower has been determined not to be eligible for a loan modification; or
 - b) The borrower does not accept an offered modification; or
 - c) The borrower accepts the modification but later breaches the modification agreement.
 - 5) Specifies, in the situation described previously, that if the loan modification is denied then the NOD may not be recorded until 30 days after the borrower is notified of the denial, or the later of 15 days after the denial of an appeal or 14 days after a post-appeal offer is declined by the borrower.
 - 6) Prohibits the recordation of a notice of sale (NOS) if a borrower has submitted a loan modification application within 60 days following the recording of a NOD, and the loan modification application is pending. The NOS may not be recorded until either of the following occur:
 - a) The borrower has been determined not to be eligible for a loan modification; or
 - b) The borrower does not accept an offered modification; or
 - c) The borrower accepts the modification but later breaches the modification agreement.
 - 7) Specifies that if the loan modification is denied then the NOS may not be recorded until 30 days after the borrower is notified in writing of the denial, or the later of 15 days after the denial of an appeal or 14 days after a post-appeal offer is declined by the borrower.
 - 8) Provides when a borrower submits an application for a loan modification less than 15 days prior to the recordation of a NOS, the NOS shall not be recorded until the borrower is evaluated for a loan modification. The NOS shall not be recorded until one of the following occur:
 - a) It has been determined the borrower is not eligible for a loan modification;
 - b) The borrower does not accept an offered modification; or

- c) The borrower accepts the modification but later breaches the modification agreement.
- 9) States that the requirement to consider a loan modification application, and to delay the recording of a NOS shall not apply if the servicer has previously denied the borrower for modification and the new application does not reflect a material change in circumstances.
- 10) Generally, prohibits the recording of a NOS under the following circumstances:
- a) The borrower is in compliance with a trial or permanent loan modification.
 - b) A short sale or deed-in-lieu of foreclosure has been approved by all parties, and proof of funds or financing has been provided to the mortgagee, trustee, beneficiary, or authorized agent.
- 11) States that if a borrower has accepted a loan modification offer, then the servicer shall provide a copy of the fully executed loan modification agreement following the receipt of the executed copy from the borrower. If the loan modification offer was not made in writing, then the servicer shall provide a summary of its terms, as soon as, possible after approval of the modification.
- 12) Provides that if a loan modification application is denied, the borrower shall have 30 days from the denial to appeal the denial to the servicer.
- 13) If a permanent loan modification has been executed the servicer shall record a rescission of the NOD.

WRITTEN ACKNOWLEDGEMENT OF LOAN MODIFICATION DOCUMENTS

- 14) Requires that when a borrower submits a loan modification application or any document in connection with a loan modification application the mortgagee, trustee, beneficiary or authorized agent shall do the following:
- a) Provide written acknowledgement of the receipt of the documentation within three business days of receipt. This initial acknowledgement shall include a description of the loan modification process, including deadlines and the toll-free number of the OHP.
 - b) Notify the borrower of any deficiency in the borrower's loan modification application no later than five business days after receipt.

DENIAL NOTICE

- 15) Following the denial of a loan modification, the servicer must send a denial notice to the borrower that includes the following:

- a) Information regarding the amount of time the borrower has from the denial letter to request an appeal of the denied loan modification, unless the denial was based upon an ineligible mortgage, ineligible property, or if the offer was not accepted by the borrower;
- b) If the denial was based on investor disallowance, then the borrower shall be provided the name of the investor and the specific reason for the investor denial;
- c) If the denial was based on a net present value calculation (NPV), then the notice shall provide the monthly gross income and property value used in the calculation and inform the borrower of his or her right to request a full appraisal to be conducted of the property;
- d) The toll-free number of the OHP.
- e) If a servicer refuses the borrower's appeal of a denial, then the letter shall include a description of other available loss mitigation alternatives, including short sales and deeds in lieu of foreclosure.

PUBLIC DISCLOSURE OF MODIFICATION PROCESSES

- 16) Requires servicers to make publicly available, information on their qualification processes, all required documentation and information necessary for a complete loan modification application and key eligibility factors for all proprietary loan modifications.
- 17) Requires servicers to track outcomes and maintain records regarding characteristics of proprietary loan modifications. Additionally, requires the posting of modification "waterfalls," eligibility criteria, and modification terms on the servicers' website.

PROHIBITION OF FEES DURING LOAN MODIFICATION EVALUATION

- 18) Prohibits a servicer from charging any application, processing, or other fee related to a proprietary loan modification, as well as, any late fees while a loan modification is under consideration.

OFFICE OF HOMEOWNER PROTECTION

- 19) Establishes the OHP which will have the following responsibilities:
 - a) Responding to inquiries and complaints from individuals regarding provisions of this bill;
 - b) Attempting to seek servicer compliance with the provisions of this bill;
 - c) Maintain an internet website to receive inquiries and complaints;
 - d) Provide an annual report to the Legislature, summarizing its activities;

- 20) States the intent of the Legislature that funding for the OHP shall come from payments made to the Attorney General via the Special Deposit Fund created via the Multi-State Mortgage Settlement.

TRUSTEE SALE POSTPONEMENTS

- 21) Requires that a borrower must be provided written notice within five calendar days after a foreclosure sale date is postponed by 10 calendar days or more and that the notice shall include the new sale date and time, and location, if applicable.

SINGLE POINT OF CONTACT

- 22) Provides for a borrower that is 60 days or more delinquent, the mortgage servicer shall inform the borrower that if they wish to pursue loss mitigation, the servicer shall establish a SPOC for the borrower.
- 23) Requires that, upon written or telephonic request by the borrower requesting loss mitigation assistance and who is 60 days or more delinquent, the servicer shall provide the borrower with the contact information of the SPOC within 10 business days.
- 24) States that if a SPOC changes, the borrower shall be informed of the new contact information no later than five business days after the change.
- 25) Provides that the SPOC is responsible for the following activities:
- a) Communicating the options available to the borrower, the actions the borrower must take to be considered for those options, and the status of the mortgage servicer's evaluation of the borrower for those options;
 - b) Coordinating receipt of all documents;
 - c) Maintaining and providing accurate information about the borrower's situation and current status in the loss mitigation process;
 - d) Ensuring that a borrower, who is not eligible for the federal Making Home Affordable (MHA) program, is considered for proprietary or other investor loss mitigation options; and
 - e) Having access to individuals with the ability to stop foreclosure proceedings.
- 26) Requires the SPOC to remain assigned to the borrower's account until the mortgage servicer determines that all loss mitigation options have been exhausted, the borrower's account

becomes current, or, in the case of a borrower in bankruptcy, the borrower has exhausted all loss mitigation options for which the borrower is potentially eligible and has applied;

- 27) Provides that the mortgage servicer shall ensure that a SPOC refers and transfers a borrower to an appropriate supervisor upon request of the borrower;
- 28) Provides an operative date of July 1, 2013 for the SPOC provisions.

ACCURACY OF FORECLOSURE DOCUMENTS

- 29) Defines a “robosigned document” as any document that contains factual assertions that are not accurate, are incomplete, or are unsupported by competent, reliable evidence. A “robosigned document” also means any document that has not been reviewed by its signer to substantiate the factual assertions contained in the document. For purposes of this definition, multiple people may verify the document or statement so long as the document or statement specifies the portions verified by each signer.
- 30) Prohibits an entity from recording a NOD or otherwise initiating the foreclosure process unless it is the beneficial interest under the deed of trust. Additionally, provides that an agent shall not record an NOD or otherwise commence the foreclosure process without the specific direction of the actual holder of the beneficial interest under the deed of trust.
- 31) Specifies that any entity that records a "robosigned" document or files a "robosigned" document in any court relative to a foreclosure proceeding shall be liable for a civil penalty of \$10,000 per "robosigned" document.

REMEDIES AND ENFORCEMENT

- 32) Provides that the Department of Real Estate, Department of Corporations and Department of Financial Institutions may enforce civil penalties against their respective licensees for a violation resulting from "robosigning."
- 33) Allows a borrower to seek an injunction to halt a pending trustee sale if the notice of sale (NOS) has been recorded and the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with the requirements listed in number 36 below. The injunction would remain in place until the aforementioned provisions are complied with.
- 34) Provides that if a trustee sale has been completed and the borrower reasonably believes the mortgagee, trust, beneficiary, or authorized agent failed to comply, the borrower may seek the greater of actual damages or \$10,000 plus attorney's fees and costs. For violations that are intentional, reckless, or resulted from willful misconduct, damages are the greater of treble actual damages or \$50,000 plus attorney's fees and costs.

- 35) Clarifies that a borrower may not obtain relief for violations that are technical or de minimis in a nature such that it did not impact the borrower's ability to pursue alternatives to foreclosure.
- 36) Provides for the following specific sections in which non-compliance could lead to an action on the part of a borrower:
- a) Section 2923.5-Pre-NOD due diligence and contact requirements.
 - b) Section 2923.6- If a borrower has submitted a loan modification application within 120 days after delinquency and the notice has not been recorded then the servicer may not record the NOD until specific conditions have been met.
 - c) 2923.7- Requirement to appoint SPOC to eligible borrower.
 - d) Section 2924- Requirements for the proper filing of NOD.
 - e) 2924.9-Borrower notice within 5 days after filing of NOD.
 - f) 2924.10- if a borrower has submitted a loan modification application within 60 days after filing of NOD, then the servicer may not record the NOS until specific conditions have been met.
 - g) 2924.11- if borrower has submitted a loan modification application within 15 days before trustee sale, then the sale may not go forward until specific conditions have been met.
 - h) 2924.12- Requires written acknowledgement of the loan modification, as well as, associated and subsequent documents. Additionally, requires that a loan modification denial notice must include specified information.
 - i) 2924.13-Provides prohibitions on when a NOS may be filed.
 - j) 2924f-Specifies the conditions and terms of trustee sales, including notice requirements.
 - k) 2924.17-Prohibition on use of "robosigned" documents.
- 37) A violation shall not affect the validity of a sale to a bona fide purchaser and any of its encumbrances.
- 38) Provides that a signatory to the Multi-State Mortgage Settlement may use compliance with the consent judgment, while it's in effect, as an affirmative defense to any liability for violation of the provisions.

39) Several provisions differ on their application to owner-occupied residential property versus residential property. Other provisions inadvertently apply to both residential and commercial.