

Date of Hearing: June 21, 2010

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Mike Eng, Chair
SB 1221 (Calderon) – As Amended: April 6, 2010

SENATE VOTE: 32-0

SUBJECT: Mortgages: notice of sale

SUMMARY: Would allow a trustee to notice the sale of a property in non-judicial foreclosure approximately five days earlier by allowing a Notice of Sale to be given 85 days, instead of three months, after the filing of a Notice of Default.

EXISTING LAW regulates the non-judicial foreclosure of properties pursuant to the power of sale contained within a mortgage contract. To commence the process, existing law authorizes the trustee, mortgagee, or beneficiary to record a Notice of Default and requires three months to lapse before noticing the sale of the property. [Civil Code Sections. 2924, 2924f.]

FISCAL EFFECT: None

COMMENTS:

According to the author:

Prior to enactment of SB 306, notices of sale were required to be published in newspapers of general circulation at least 20 days prior to the sale of the property, and recorded with the county recorder at least 14 days prior to the sale. SB 306 conformed these dates, so that notices of sale must now be published and recorded at least 20 days prior to sale. The change was intended to give the public and those relying on the recording process as much advance notice of sales as possible.

The problem with the law, as amended by SB 306, is that, while publication dates can be coordinated very precisely between trustees and newspapers, the recording process is subject to greater opportunity for error. If recorders close early on a given day due to budget cutbacks, or if the notice of sale document is delivered to the recorder's office, but not actually recorded until the next day, a technical violation of the law can occur.

To address that issue, SB 1221 would permit a notice of sale to be given five days earlier in the process – 85 days after recording the Notice of Default, rather than three months after the notice of default is recorded. The author notes that those extra five days seek to account for any delays in the recording process, and states that the bill is not intended to propose any change in sale dates.

Foreclosures in California are generally non-judicial, meaning that they are accomplished without court involvement. The first step in the foreclosure process is the filing of a Notice of Default, which generally occurs after three or more months of delinquency. The foreclosing entity must then wait at least three months before noticing the sale of the property, which must be posted, published, and filed with the county recorder before the date of sale.

Prior to January 1, 2010, then-existing law required the Notice of Sale to be published and posted at least 20 days before the sale of the property. Those provisions also required the notice to be filed with the county recorder at least 14 days before sale. To conform those timing requirements and provide greater advance notice, SB 306 (Calderon, Chapter 43, Statutes of 2009), effective January 1, 2010, instead required the Notice of Sale to be filed 20 days before sale. That change conformed the posting, publishing, and filing requirements to the same 20-day period.

In response to workability issues regarding the ability to file a notice of sale within the new statutory timeframe, this bill would permit the mortgagee, trustee, or beneficiary to give a notice of sale approximately five days earlier (85 days instead of three months after the filing of the notice of default).

REGISTERED SUPPORT / OPPOSITION:

Support

United Trustees Association (Sponsor)

Opposition

None on file.

Analysis Prepared by: Mark Farouk / B. & F. / (916) 319-3081