

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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CALIFORNIA'S NEW MORTGAGE FORECLOSURE LAW

As we discussed earlier this year, in July California's Governor Brown signed into law a new foreclosure reform act, known as the California Foreclosure Reduction Act. The California Department of Corporations (DOC) has, this week, released an excellent summary of the provisions of this law which go into effect on January 1, 2013. The summary can be found on the department's website at www.corp.ca.gov.

The application of the law varies with time. Some provisions are in effect for only five years. Others only become effective in five years. Further, as the DOC points out, many provisions apply only to servicers who have participated in more than 175 foreclosures the preceding year.

Provisions that apply to servicers who foreclosed 175 or fewer homes in the preceding year are as follows:

- Servicers must try to contact borrowers before commencing foreclosure and file a declaration testifying to compliance with this requirement at the time of the recording of the Notice of Default (NOD).
- Recorded declarations, NOD's, Notice of Sales (NOS), assignments and trustee substitutions must be accurate and supported by competent and reliable evidence.
- Servicers may not continue with foreclosure proceedings when a loan modification application has been submitted until after the borrower has been provided with the yes or no on the modification.
- Servicers must provide a written notice within five business days of a foreclosure sale postponement where the sale is postponed for at least 10 days.
- When the servicer exceeds 175 foreclosures, the servicer must report to the Department of Corporations.

Provisions that apply to servicers with more than 175 foreclosures:

- Again, servicers must attempt to contact the borrower and file a declaration to that effect at the time of recording of the NOD.
- Again, all documents in the foreclosure process must be accurate and complete and supported by competent and reliable evidence.
- Servicers may not commence or continue foreclosures when a completed modification application has been submitted, until 1) the servicer makes a written determination of eligibility 2) any appeal period has expired, 3) the borrower has accepted a loan modification within 14 days of the offer or, 4) there has been a prior modification upon which the borrower has defaulted.

- Servicers must maintain a “single point of contact” upon request by the borrower.
- After recording an NOD, a servicer must, within five days, notify the borrower who has not submitted a modification application, that the borrower may qualify for a loan modification or foreclosure prevention alternative, and the process involved.
- The servicer must provide a borrower written acknowledgment of receipt of a complete loan modification application within five business days.
- Upon denial of the modification written request, written notice must be provided to the borrower including 1) timing and procedures to request an appeal of the denial, 2) the reasons for disallowance, 3) information related to the net present value calculation if the denial was based on the calculation, 4) where applicable, a finding of a prior failed loan modification, and/or 5) the servicer’s descriptions of other alternatives. The borrower must be allowed 30 days from the date of written denial, to appeal the denial. Recording an NOD or conducting a trustee sale cannot occur until the 30 day period has run or 15 days after the denial of a filed appeal or 14 days after a loan modification is offered but declined.
- Servicers cannot impose application, processing and other fees for loan modifications or collect late fees while the modification request is under review and being appealed.
- Servicers must provide prior to recording an NOD, notice that a “service person”, or a dependent of one, may be entitled to certain protections under federal law and may request a copy of the applicable loan document and payment history.
- Again, servicers, following the postponement of the foreclosure for ten days or more must provide written notice to the borrower within five business days.

Five years from now many of the provisions summarized above become inoperative. They will be replaced with similar provisions concerning

communication requirements, prohibition of dual tracking, notification requirements in the event of denial and appeal, duty to maximize net present value, and other procedural requirements.

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ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.

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