

Cal. Civ. Code §§2923.52–2923.53

2923.52. (a) Notwithstanding paragraph (3) of subdivision (a) of Section 2924, a mortgagee, trustee, or other person authorized to take sale shall not give notice of sale until at least 90 days after the lapse of three months as set forth in paragraph (2) of subdivision (a) of Section 2924, in order to allow the parties to pursue a loan modification to prevent foreclosure, if all of the following conditions exist:

(1) The loan was recorded during the period of January 1, 2003, to January 1, 2008, inclusive, and is secured by residential real property.

(2) The loan at issue is the first mortgage or deed of trust that the property secures.

(3) The borrower occupied the property as the borrower's principal residence at the time the loan became delinquent.

(4) The notice of default has been recorded on the property.

(b) This section does not apply to loans serviced by a mortgage loan servicer if that mortgage loan servicer has obtained a temporary or final order of exemption pursuant to Section **2923.53** that is current and valid at the time the notice of sale is given.

(c) This section does not apply to loans made, purchased, or serviced by:

(1) A California state or local public housing agency or authority, including state or local housing finance agencies established under Division 31 (commencing with Section 50000) of the Health and Safety **Code** and Chapter 6 (commencing with Section 980) of Division 4 of the Military and Veterans **Code**.

(2) Loans that are collateral for securities purchased by an agency or authority described in paragraph (1).

(d) This section shall become operative 14 days after the issuance of regulations, which shall include the form of the application for mortgage loan servicers, by the commissioner pursuant to subdivision (d) of Section **2923.53**.

(e) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

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2923.53. (a) A mortgage loan servicer that has implemented a comprehensive loan modification program that meets the requirements of this section shall have the loans that it services exempted from the provisions of Section **2923.52**, upon order of the commissioner. A comprehensive loan modification program shall include all of the following features:

(1) The loan modification program is intended to keep borrowers whose principal residences are homes located in California in those homes when the anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(2) The loan modification program targets a ratio of the borrower's housing-related debt to the borrower's gross income of 38 percent or less, on an aggregate basis in the program.

(3) The loan modification program includes some combination of the following features:

(A) An interest rate reduction, as needed, for a fixed term of at least five years.

(B) An extension of the amortization period for the loan term, to no more than 40 years from the original date of the loan.

(C) Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan.

(D) Reduction of principal.

(E) Compliance with a federally mandated loan modification program.

(F) Other factors that the commissioner determines are appropriate. In determining those factors, the commissioner may consider efforts implemented in other jurisdictions that have resulted in a reduction in foreclosures.

(4) When determining a loan modification solution for a borrower under the loan modification program, the servicer seeks to achieve long-term sustainability for the borrower.

(b) (1) A mortgage loan servicer may apply to the commissioner for an order exempting loans that it services from Section **2923.52**. If the mortgage loan servicer elects to apply for an order, the application shall be in the form and manner determined by the commissioner.

(2) Upon receipt of an initial application for exemption under this section, the commissioner shall immediately notify the applicant of the date of receipt of the application and shall issue a temporary order, effective from that date of receipt, exempting the

mortgage loan servicer from the provisions of subdivision (a) of Section **2923.52**. The temporary order shall remain in effect until a final order has been issued by the commissioner pursuant to paragraph (3). If the initial application for exemption is denied pursuant to paragraph (3), the temporary order shall remain in effect for 30 days after the date of denial.

(3) Within 30 days of receipt of an initial or revised application, the commissioner shall make a final determination on whether the application meets the criteria of subdivision (a). If, after review of the application, the commissioner concludes that the mortgage loan servicer has a comprehensive loan modification program that meets the requirements of subdivision (a), the commissioner shall issue a final order exempting the mortgage loan servicer from the requirements of Section **2923.52**. If the commissioner concludes that the loan modification program does not meet the requirements of subdivision (a), the application for exemption shall be denied and a final order shall not be issued.

(4) A mortgage loan servicer may submit a revised application if its application for exemption is denied.

(c) The commissioner may revoke a final order, upon reasonable notice and an opportunity to be heard, if the mortgage loan servicer has submitted a materially false or misleading application or if the approved loan modification program has been materially altered from the loan modification program on which the exemption was based. A revocation by the commissioner shall not be retroactive.

(d) The commissioner shall adopt, no later than 10 days after the date this section takes effect, emergency and final regulations to clarify the application of this section and Section **2923.52**, including the creation of the application for mortgage loan servicers and requirements regarding the reporting of loan modification data by mortgage loan servicers.

(e) Three months after the first exemption is issued pursuant to subdivision (b) by order of any commissioner specified in paragraph (1) of subdivision (j), the Secretary of Business, Transportation and Housing shall submit a report to the Legislature regarding the details of the actions taken to implement this section and the numbers of applications received and orders issued. The secretary shall submit an additional report six months from the date of the submission of the first report and every six months thereafter. Within existing resources, the commissioners shall collect, from some or all mortgage loan servicers, data regarding loan modifications accomplished pursuant to this section and shall make the data available on an Internet Web site at least quarterly.

(f) The Secretary of Business, Transportation and Housing shall maintain on an Internet Web site a publicly available list disclosing the final orders granting exemptions, the date of each order, and a link to Internet Web sites describing the loan modification programs.

(g) Until January 1, 2010, the commissioner is authorized to contract for goods and services necessary to implement the provisions of this section and Section **2923.52**, and any such contract shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract **Code**. Not less than 30 days prior to awarding any contract under this section, the commissioner shall provide the pending contract documents to the Joint Legislative Budget Committee.

(h) Any person who violates any provision of this section or

Section **2923.52** shall be deemed to have violated his or her license law as it relates to these provisions.

(i) Nothing in this section or Section **2923.52** shall require a servicer to violate contractual agreements for investor-owned loans or provide a modification to a borrower who is not willing or able to pay under the modification.

(j) The submission of an application for an exemption under this section, the reliance upon such an exemption, or the provision to the commissioner of data related to the loan modification program shall not confer on the commissioner visitorial authority over a federally chartered financial institution. Nothing in this subdivision is intended to affect the authority of the commissioner over a federally chartered financial institution pursuant to federal law or regulation.

(k) For purposes of this section and Sections **2923.52** and **2923.54**:

(1) "Commissioner" means any of the following:

(A) The Commissioner of Corporations for licensed residential mortgage lenders and servicers and licensed finance lenders and brokers servicing mortgage loans and any other entities servicing mortgage loans that are not described in subparagraph (B) or (C).

(B) The Commissioner of Financial Institutions for commercial and industrial banks and savings associations and credit unions organized in this state servicing mortgage loans.

(C) The Real Estate Commissioner for licensed real estate brokers servicing mortgage loans.

(2) "Housing-related debt" means debt that includes loan principal, interest, property taxes, hazard insurance, flood insurance, mortgage insurance, and homeowner association fees.

(3) "Mortgage loan servicer" means a person or entity that receives or has the right to receive installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan or deed of trust, and performs services relating to that receipt or enforcement as the holder of the note or on behalf of the holder of the note evidencing that loan.

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(e) Three months after the first exemption is issued pursuant to

subdivision (b) by order of any commissioner specified in paragraph (1) of subdivision (j), the Secretary of Business, Transportation and Housing shall submit a report to the Legislature regarding the details of the actions taken to implement this section and the numbers of applications received and orders issued. The secretary shall submit an additional report six months from the date of the submission of the first report and every six months thereafter. Within existing resources, the commissioners shall collect, from some or all mortgage loan servicers, data regarding loan modifications accomplished pursuant to this section and shall make the data available on an Internet Web site at least quarterly.

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