

---

## New Requirements Under Senate Bill 1137, California's Foreclosure Reform Law

by Angela M. Yates and Diane Bazan Young

---

*In July, the California State Legislature enacted SB 1137 as an urgency measure designed to address the adverse effects of the state's high foreclosure rate. Broadly summarized, the new law 1) requires lenders to contact homeowner borrowers to explore options for avoiding foreclosure on their primary residence at least 30 days before filing a notice of default; 2) deems that loan servicers are acting in the best interest of all parties in agreeing to, or implementing, a loan modification workout plan if certain conditions are met; 3) gives residential tenants in possession of a rental housing unit at the time the property is sold in foreclosure 60 days notice to vacate the property; and 4) requires owners acquiring vacant residential real property through foreclosure to maintain the exterior of vacant properties.*

---

The key provisions of SB 1137 are summarized below.

### Conditions to Filing a Notice of Default—Section 2 of SB 1137

#### Contact Requirement

Section 2 of SB 1137 prevents a lender from filing a notice of default ("NOD") pursuant to Section 2924 of the California Civil Code ("Section 2924") until 30 days after the lender has made contact with the borrower in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. (This recorded notice of default is the first step in the non-judicial foreclosure process for real property in California.) During the initial contact, the lender must advise the borrower of the borrower's right to request a subsequent meeting to occur within 14 days. In either the initial or subsequent meeting, the lender must also provide the borrower with the toll-free telephone number made available by the U.S. Department of Housing and Urban Development ("HUD") to find a HUD-certified housing counseling agency. That toll-free telephone number is currently 1-800-569-4287.

**Method of Contact/Due Diligence**

In order to satisfy its obligation to contact the borrower, the lender must perform specific, sequential tasks, outlined by SB 1137, until the borrower is actually reached; all methods of contact have been exhausted; the borrower has surrendered the property; the borrower is in an active bankruptcy; or the borrower has contracted with a person or entity whose primary business is advising people on how to extend the foreclosure process or avoid their contractual obligations to mortgage lenders.

Those tasks include, but are not limited to, 1) sending a first-class letter that includes the toll-free HUD number; 2) placing a telephone call to the borrower at the primary telephone number on file at least three different times at different hours and on different days (unless primary and secondary telephone numbers have been disconnected); 3) sending a certified letter with return receipt requested; 4) providing a toll-free telephone number that will transfer to a live person during business hours; and 5) providing a prominent link to the lender's internet homepage containing certain information related to options to avoid foreclosure and documents and information that the borrower needs to collect in preparation for discussing such options.

**NOD Requirements**

An NOD filed pursuant to Section 2924 must include a declaration from the lender that it has either 1) successfully contacted the borrower; 2) that it has exercised the due diligence required by the statute to make contact with the borrower, but failed to do so; or 3) that the borrower has surrendered the property to the lender.

If a lender had already filed the NOD prior to the enactment of SB 1137 and did not subsequently file a notice of rescission, then the lender must, as part of the notice of sale filed pursuant to Section 2924, include a declaration from the lender that either 1) the lender successfully contacted the borrower to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure; or 2) lists the efforts made to contact the borrower in the event no contact was made.

**Applicable Loans/Term**

Section 2 of SB 1137 applies to loans made to borrowers between January 1, 2003 and December 31, 2007, inclusive, which loans are secured by the principal residence of such borrowers, regardless of the nature or purpose of the loan. SB 1137 does not, by its terms, address the situation in which an individual has provided a guaranty to support a loan and pledged his/her principal residence to secure such guaranty as opposed to securing the loan. Section 2 of SB 1137 is now in effect and will remain so until January 1, 2013.

**Servicers—Section 3 of SB 1137****Loan Modifications / Term**

Section 3 of SB 1137 is a pronouncement that a loan servicer is deemed to be acting in the best interest of all parties if it agrees to or implements a loan modification or workout plan for which 1) the loan is in payment default or a payment default is reasonably foreseeable; and 2) anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis. Section 3 of SB 1137 is now in effect and will remain so until January 1, 2013.

## Residential Tenant - Sections 4 and 6 of SB 1137

Sections 4 and 6 of SB 1137 both apply to residential property that is occupied by tenants.

### Posted Notice

Section 4 requires that upon posting a notice of sale on the property to be sold pursuant to Section 2924, the notice specified below must also be posted on such property and mailed to the resident of the property subject to the foreclosure sale. Such notice shall be in English, Spanish, Chinese, Tagalog, Vietnamese and Korean.

“Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 60-day eviction notice. However, other laws may prohibit an eviction in this circumstance or provide you with a longer notice before eviction. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights you may have.” The approved translations of this notice can currently be found on the State of California Department of Corporations website at <http://www.corp.ca.gov/#Who> under “What’s New” (7/29/08).

### Applicable Loans/Term

Section 4 of SB 1137 applies to loans secured by residential real property if the billing address for the mortgage note is different than the property address. Section 4 of SB 1137 is now in effect and will remain so until January 1, 2013.

### Notice Requirements

Section 6 provides that a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure must be given 60 days’ written notice to vacate the property before such tenant or subtenant may be removed from the property.

This means that if the lender wants to evict a tenant that is in possession at the time of a foreclosure, the tenant must be given at least 60 days written notice to quit. This notice must be delivered to the tenant in one of the following ways: (1) personally; (2) if the tenant is absent from the residence and the tenant’s usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy in the mail to the tenant’s residence; or (3) if the tenant’s place of business or residence cannot be ascertained, or a person of suitable age or discretion there can not be found, then by affixing a copy in a conspicuous place on the property and also delivering a copy to a person there residing if such person can be found and also sending a copy through the mail addressed to the tenant at the property.

### Applicable Loans/Term

Section 6 of SB 1137 does not apply if any party to the note remains in the property as a tenant, subtenant or occupant. Section 6 of SB 1137 is now in effect and will remain so until January 1, 2013.

---

## Maintenance Obligations for Properties Acquired through Foreclosure—Section 5 of SB 1137

### Maintenance Obligations

Section 5 of SB 1137 requires a legal owner to maintain vacant residential property purchased by that owner through foreclosure under a mortgage or deed of trust or be subject to a fine of up to \$1,000 per day. Failure to maintain the property means failure to take care of the exterior of the property, including, but not limited to, permitting excessive foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers or squatters from remaining on the property, or failing to take action to prevent mosquito breeding or other conditions that create a public nuisance. If the governmental entity chooses to impose a fine, it shall give notice of the alleged violation and pending fine. Such fine may be assessed if action to correct the violation is not commenced within a period of not less than 14 days and completed within a period of not less than 30 days.

### Applicable Property/Term

Section 5 of SB 1137 applies to residential real property. Section 5 of SB 1137 is now in effect and will remain so until January 1, 2013.

### Live Link

Notice to Residents of Foreclosed Property, State of California Department of Corporations (PDF, 1 page)

---

For further information, please contact:

Angela M. Yates [\(bio\)](#)  
San Diego  
+1.619.544.3217  
[angela.yates@pillsburylaw.com](mailto:angela.yates@pillsburylaw.com)

Diane Bazan Young [\(bio\)](#)  
San Diego  
+1.619.544.3118  
[diane.young@pillsburylaw.com](mailto:diane.young@pillsburylaw.com)

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2008 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.