

SEPTEMBER 26, 2012

LAW ALERT

HOMEOWNERS BILL OF RIGHTS CHANGES THE FORECLOSURE PROCESS

M David Kroot

John T. Nagle

Polly V. Marshall

Lynn Hutchins

Karen M. Tiedemann

Thomas H. Webber

John T. Haygood

Dianne Jackson McLean

Michelle D. Brewer

Jennifer K. Bell

Robert C. Mills

Isabel L. Brown

James T. Diamond, Jr.

Margaret F. Jung

Heather J. Gould

Juliet E. Cox

William F. DiCamillo

Amy DeVaudreuil

Barbara E. Kautz

Erica Williams Orcharton

Luis A. Rodriguez

Xochitl Carrion

Rafael Yaquian

Vincent L. Brown

Pursuant to SB 900 and AB 278, commonly referred to as the Homeowners Bill of Rights (the "Bill"), lenders and servicers of first lien mortgages on owner-occupied residential homes (with 4 or fewer dwelling units) must take several new steps prior to commencing foreclosure proceedings (recording the notice of default) and/or conducting a trustee's sale. The Bill provides loss mitigation options to prevent foreclosure, and is effective January 1, 2013. This law alert summarizes key components of the Bill.

Competent and Reliable Evidence of Borrower's Default Required

In an effort to reduce the number of foreclosures, the Bill requires a loan servicer to perform certain due diligence, including providing the borrower with certain loss mitigation options, including information on loan modification prior to the recording of a notice of default or notice of sale. A servicer that engages in multiple and repeated uncorrected violations of these requirements is subject to a civil penalty of up to \$7,500 per loan.

Dual Tracking Prohibited

Commencing next year, if a borrower submits a complete application for a first lien loan modification, the lender may not record a notice of default, notice of sale or conduct a trustee's sale while the application is pending. The foreclosure process can only proceed if the application is denied (and after the exhaustion of the appeal process), or 31 days after the written denial notification, whichever occurs last.

Single Point of Contact Required

Lenders and loan servicers must promptly establish a single point of contact for foreclosure prevention alternatives and provide to the borrower one or more direct means of communication with that contact. The single

point of contact must remain assigned to the borrower's account until all loss mitigation options are exhausted or the borrower's account becomes current.

Approved Written Foreclosure Prevention Alternatives Must Be Honored

If a borrower is in compliance with an approved written foreclosure prevention plan (the "Plan") or such a Plan has been approved in writing by all parties with proof of funds or financing provided to the servicer, a beneficiary (lender) may not record a notice of default, notice of sale or conduct a trustee's sale. Upon a parties' execution of a permanent Plan, any recorded notice of default must be rescinded and a pending trustee's sale must be canceled. In addition, if a loan is transferred or sold to another servicer, the subsequent servicer must continue to honor any approved Plan.

New Borrower Remedies

Borrowers have the right to obtain certain information about their loans, and a right of action for any "material violation" of the Bill. Courts may award injunctive relief before a trustee deed is recorded and for actual damages after recordation. If a material violation is intentional, reckless, or willful, a court may award the borrower the greater of treble actual damages or \$50,000. In addition, a prevailing borrower in an action may be awarded reasonable attorney's fees and costs.

For more information on the Bill, please contact Dianne Jackson McLean, Xochitl Carrion, or any other attorney at Goldfarb & Lipman LLP at 510-836-6336.

Facsimile

510 836-1035

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP