

California's New Homeowner Law Could Hamper Foreclosures

By **Stephen Britt** (January 23, 2025)

A new law in California affecting homeowners took effect this year. The bill, A.B. 2424, adjusts the Homeowner Bill of Rights statutory framework and adds further restrictions on nonjudicial foreclosure proceedings in the state. The bill contains several critical revisions to existing nonjudicial foreclosure statutes.

The first of these revisions will modify California Civil Code Section 2923.5 to include additional required disclosures in loss mitigation outreach correspondence. Section 2923.5 sets forth mortgage servicers' requirements to contact borrowers by telephone to discuss foreclosure prevention alternatives before recording a notice of default.



Stephen Britt

Beyond the requirements in the previous iteration of Section 2923.5 — that servicers provide contact information for a federally certified counseling agency — the new version requires servicers to disclose that: a third party, such as a family member, housing counselor or attorney, may request copies of recorded notices of default and sale, and that providing these notices may help the borrower avoid foreclosure.

Mortgage servicers will therefore need to update form loss mitigation correspondence to conform with these new requirements, and ensure that disclosures made by customer service representatives include these new statutory requirements.

This new requirement has both positive and negative consequences. From a positive perspective, it may provide elderly or disabled borrowers with further protections by ensuring that key third parties are notified when foreclosure proceedings begin. A potential negative consequence is that unscrupulous borrowers may use this new requirement to record notices solely for the purpose of slowing foreclosure proceedings.

Furthermore, the new language in Section 2923.5 does not appear to limit the number of these recordings available to borrowers, potentially leading to absurd results.

A.B. 2424 also adds provisions to Civil Code Section 2924f that concern marketing and selling of the property. While these new requirements are well intentioned, they may lead to significant unintended consequences. The first of these provisions requires servicers or trustees to postpone a scheduled trustee's sale or auction upon receipt of a listing and sales agreement for the property.

The new version of Section 2924f says that if a servicer or trustee receives a listing agreement with a California-licensed real estate broker to be placed in a public marketing platform at least five days before a scheduled auction, servicers must postpone the sale for at least 45 days.

Notably, the new statute does not contain any requirements that the listing price be reasonable. Accordingly, a borrower with no intention of actually selling the property may still obtain a 45-day postponement of sale merely by listing his property for sale, even if the listing contains a sales price with little to no chance of actually receiving an offer.

A.B. 2424 also includes a provision requiring postponement of an auction upon receipt of a purchase agreement for the property. Under the new version of Section 2924f, a servicer or trustee is required to postpone an auction for another 45 days if a borrower provides the servicer with "a purchase agreement for the sale of the property" at least five business days before the postponed sale date.

Therefore, a borrower will now be provided with a second 45-day postponement upon receipt of a sales agreement. The statute defines a "purchase agreement" as a:

bona fide and fully executed contract for the sale of the property that is subject to a power of sale with a purchase price amount equal to or greater than the amount of the unpaid balance of all obligations of record secured by the property.

The new version of the provision regrettably does not include any restrictions preventing savvy borrowers from entering into purchase agreements with "straw men" buyers without any intention of actually completing the transaction.

The new version of Section 2924f may therefore effectively provide unscrupulous parties with further loopholes to be exploited in so-called foreclosure delay tactics. Parties hoping to engage in such tactics, however, should be forewarned that submitting false documents to their servicer or lender may constitute mortgage fraud and potentially expose them to criminal prosecution.

Next, A.B. 2424 amends California Civil Code Section 2924f to require servicers to provide borrowers with the "fair market" value of the property at least 10 days before a scheduled trustee's sale. After then, trustees will be prohibited from selling the property for less than 67% of the fair market value.

"If the property remains unsold after the initial trustee's sale," the amendment reads, "the trustee shall postpone the sale for at least seven days." Only after the conclusion of this seven-day window can the property can be sold to the highest bidder, regardless of whether the price exceeds 67% of the estimated fair market value. The statute defines "fair market value" as:

an estimate of the fair market value of the property made within six months of the initially scheduled date of sale and determined by an opinion of a licensed real estate broker, an appraisal from a licensed appraiser, a value from a commercially utilized automated valuation model or a value from a computerized property valuation system that is used to derive a real property value.

These new requirements will therefore force servicers and trustees to conduct more than one auction if the bids do not reach the 67% threshold during the initial sale, further complicating the trustee sale process.

The costs of these duplicative trustee sales will undoubtedly be passed on to borrowers through added foreclosure and trustee fees, diminishing the likelihood of reinstatement or redemption to avoid an auction in the first place. A more likely result will be higher opening bid amounts during initial trustee sales to ensure that any bid meets this 67% value requirement.

In summary, the requirements from A.B. 2424 will provide some further protections for borrowers while presenting a slew of new requirements that servicers and trustees must follow during foreclosure proceedings.

Stephen D. Britt is special counsel at Severson & Werson PC.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.