

May 29, 2009

Dear Customer,

As you may know, two recent California bills, SBx2 7 and ABx2 7, were signed by the Governor on February 20, 2009 creating the California Foreclosure Prevention Act ("CFPA"). CFPA becomes operative on June 15, 2009. The primary impact of CFPA is that, unless the loan servicer (as defined in CFPA) has an approved exemption, the beneficiary and trustee must wait after recording a notice of default involving certain residential loans an additional 90 days beyond the currently required 3 month period before a notice of trustee's sale may be given.

Emergency Regulations have been issued interpreting CFPA. Enclosed for your convenience is a copy of the final version of SBx2\_7 (ABx2\_7 is identical) and a copy of the Emergency Regulations. Beneficiaries, loan servicers and trustees must have CFPA compliance in place before CFPA becomes operative on June 15, 2009.

### **What is a "Covered Loan" under CFPA?**

A "Covered Loan" exists if *all* of the following conditions apply: (1) it was recorded between January 1, 2003 to and including January 1, 2008 ("Covered Loan Period"), and is secured by *residential real property*; (2) it is secured by a first mortgage or deed of trust; (3) the borrower occupied the property as the borrower's principal residence *at the time the loan became delinquent*; and, (4) A notice of default has been recorded on the property.

### **What happens under CFPA if I am foreclosing on a Covered Loan?**

If non-exempt, before a beneficiary or trustee can "give" notice of sale, the beneficiary and trustee must wait an additional 90 days beyond the 3 month period already required by California law.

### **Exemptions from Provisions of CFPA (Civil Code § 2923.52).**

The following exemptions apply to the new 90 day requirement of Civil Code § 2923.52:

- Where the mortgage loan servicer has obtained a temporary or final order of exemption from the Commissioner that is current and valid at the time the notice of sale is given.
- Loans made, purchased, or serviced by a California state or local public housing agency or authority, including (but not limited to) state or local housing finance agencies established Cal-Vet Loans.
- Loans that are collateral for securities purchased by a state or local agency or authority described in the preceding paragraph.
- The borrower has surrendered the property, as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.
- The borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes regarding how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.
- Where the borrower has filed a bankruptcy, and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case or granting relief from a stay of foreclosure.

### **Who is a Mortgage Loan Servicer and who can apply for an exemption?**

Under CFPA a "mortgage loan servicer" is "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."

Therefore, whether you service your own loans or the loans held by others, you will be considered a “mortgage loan servicer” under CFPA.

### **How does a mortgage loan servicer apply for an exemption from the 90 day waiting period under CFPA?**

A mortgage loan servicer is exempt from the 90 day additional waiting period if the servicer has applied with the Commissioner for approval of a “comprehensive loan modification program” and the servicer has received from the Commissioner a temporary or final order of exemption.

### **Who Is the Commissioner?**

The “Commissioner” will be different for loan servicers regulated by different entities. The three Commissioners are those overseeing three different departments of the State of California. The following describes where various applicants should apply:

- Applicants licensed by the Department of Corporations under either the California Finance Lenders Law (“CFL”) or the California Residential Mortgage Lending Act (“RML”), and any other entities servicing residential mortgage loans that are not regulated by the Commissioners listed below (catch-all), shall file their application with the Department of Corporations.
- Commercial or industrial banks, savings associations, or credit unions organized in California shall file their application with the Department of Financial Institutions. For purposes of the regulation, the phrase “organized in this state” means institutions headquartered in California.
- Applicants licensed by the Department of Real Estate under the Real Estate Law shall file their application with the Department of Real Estate.

### **When does the mortgage loan servicer’s exemption become effective?**

Upon receipt of a loan servicer’s application, a temporary exemption order will be issued by the Commissioner that is valid until a final order of exemption is issued or 30 days after the date of denial of an application. The Commissioner has 30 days from receipt of an original or revised application to approve or deny the exemption. If the Commissioner grants the final order of exemption, it continues in effect unless revoked.

If the application is denied, and the loan servicer reapplies, a temporary order of exemption may not be extended beyond 30 days from the denial of the original application. If you have obtained an order of exemption, please forward a copy to our office.

### **New Declarations required in every notice of sale given on or after June 15, 2009.**

CFPA requires that a notice of sale **recorded** pursuant to Section 2924f shall include a declaration from the mortgage loan servicer stating both of the following:

- “Whether or not the mortgage loan servicer has obtained from the commissioner a final or temporary order of exemption pursuant to Section 2923.53 that is current and valid on the date the notice of sale is filed.
- Whether the timeframe for giving notice of sale specified in subdivision (a) of Section 2923.52 does not apply pursuant to Section 2923.52 or 2923.55.”

Under the Emergency Regulations, a loan servicer must submit the declaration to be included in the notice of sale as part of the servicer's application for an exemption. Enclosed is a sample declaration that we have adopted as part of our CFPB compliance program for your counsel's review. We recommend, subject to approval of your counsel, that you include the sample declaration in Exhibit 2 of your application for exemption. In any case, if you apply for an exemption from the commissioner, please immediately forward to us a copy of your temporary or final order of exemption along with your declaration language. If you have not applied or received a temporary or final order of exemption from the commissioner, enclosed are sample declarations that we have adopted as part of our CFPB compliance program. If your counsel has questions regarding the proposed declarations, we would be happy to speak with them or put them in contact with our counsel that drafted the declarations.

### **Integration of CFPB with existing SB 1137 procedures (Civil Code § 2923.5).**

As you know, last year the legislature enacted SB 1137 that requires loan servicers to implement certain procedures to contact borrowers with loans secured by residential properties to discuss the borrower's financial situation and options for avoiding foreclosure.

The Emergency Regulations implementing CFPB require that, for an applicant to obtain an order of exemption, the comprehensive loan modification program shall, at a minimum, be made available to any borrower meeting the eligibility requirements of the Emergency Regulations who calls, writes, or otherwise communicates with the mortgage loan servicer to notify the servicer of a financial hardship or to explore modifications to an existing loan, and shall be made available to borrowers **as part of the contact required under Civil Code Section 2923.5 [i.e., SB 1137]**. In addition, every servicer that contacts a borrower in writing under Civil Code Section 2923.5 (SB 1137) shall notify the borrower of the availability of the servicer's comprehensive loan modification program.

Therefore, if you plan to apply for an exemption, you must modify your compliance program under SB 1137 (Civil Code § 2923.5).

### **Conclusion**

Enclosed is a Declaration to be completed and returned to our office on all loans without a scheduled sale date. To avoid delays in scheduling of the sale dates, the declaration must be returned to our office prior to the end of the statutory 3 month pre-publication period in order for us to determine if the additional 90 day waiting period applies. Also enclosed is a Notice of Default Declaration and Loan Servicer Instructions to be completed and forwarded to our office on new foreclosure referrals. Hopefully the above information is useful to you and will help in achieving compliance with CFPB. If you have questions, please feel free to contact our office.

Very truly yours,

T.D. SERVICE COMPANY

Enclosure

**SAMPLE DECLARATION**  
**(For Review of Loan Servicer's Counsel)**

**A. Sample Declaration Language for the Loan Servicer to include in Exhibit 2 to its Application to the Commissioner for an Exemption from Civil Code § 2923.52.<sup>1</sup>**

Upon instruction of the loan servicer, the following declaration would be included in the trustee's form of notice of sale where the loan servicer has a temporary or final order of exemption pursuant to Civil Code § 2923.53.

Regarding the property that is the subject of this notice of sale, the "mortgage loan servicer" as defined in Civil Code § 2923.53(k)(3), declares that it has obtained from the Commissioner a final or temporary order of exemption pursuant to Civil Code section 2923.53 and that the exemption is current and valid on the date this notice of sale is recorded. The time frame for giving a notice of sale specified in Civil Code Section 2923.52 subdivision (a) does not apply to this notice of sale pursuant to Civil Code Sections 2923.52 or 2923.55.

**B. Where The Loan Servicer Does Not Have a Commissioner's Exemption But The Loan *is Not* a Covered Loan or is Otherwise Exempt from Civil Code § 2923.52.<sup>2</sup>**

Regarding the property that is the subject of this notice of sale, the "mortgage loan servicer" as defined in Civil Code § 2923.53(k)(3) declares that it has not obtained from the Commissioner a final or temporary order of exemption pursuant to Civil Code section 2923.53 that is current and valid on the date this notice of sale is recorded. The time frame for giving a notice of sale specified in Civil Code Section 2923.52 subdivision (a) does not apply to this notice of sale pursuant to Civil Code Sections 2923.52 or 2923.55.

**C. Where The Loan Servicer Does Not Have a Commissioner's Exemption But The Loan *is* a Covered Loan and is Not Otherwise Exempt from Civil Code § 2923.52.<sup>3</sup>**

Regarding the property that is the subject of this notice of sale, the "mortgage loan servicer" as defined in Civil Code § 2923.53(k)(3) declares that it has not obtained from the Commissioner a final or temporary order of exemption pursuant to Civil Code section 2923.53 that is current and valid on the date this notice of sale is recorded. The time frame for giving a notice of sale specified in Civil Code Section 2923.52 subdivision (a) does apply to this notice of sale.

<sup>1</sup> See, Civil Code §§ 2923.52(b) and 2923.53. Emergency Regulation 10 CCR § 2923.9, requires that the loan servicer attach to its application for exemption: "Exhibit (2): A NOTICE OF SALE form in compliance with Civil Code Section 2923.54, **or a copy of the declaration, or forms of declarations, in compliance with Civil Code Section 2923.54 that the applicant will instruct its trustee to include in its Notice of Sale.**" Since trustees may use slightly different forms of notices of sale or change their form of notice of sale form after the loan servicer obtains its exemption, it is recommended that the loan servicer merely attach to its application for exemption copies of the declarations it intends to instruct the trustee to include into its notice of sale **and not an entire notice of sale itself.**

<sup>2</sup> This language tracks the provisions of the authority set forth in footnote 1.

<sup>3</sup> This language tracks the provisions of the authority set forth in footnote 1.