



1363 MARSH STREET, SAN LUIS OBISPO, CALIFORNIA 93401
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Civil Code 2923.5 – Compliance Information

- The effective date of this California Legislation is January 1, 2013.
- *Affects all loans that are*
 - a. *Secured by a First Deed of Trust AND owner occupied, residential, one to four units.*
- Requirements are
 - a. 30 days PRIOR to recording a Notice of Default the borrower must be mailed by first class mail as a 'first contact' by the lender.
 - b. After the letter has been sent, the lender SHALL attempt to contact the borrower by phone at least three times at different hours and different days to advise them of alternatives, refinancing, possibility of foreclosure and their ability to repay the loan.
 - c. If contact is not made with the borrower within two weeks after the first letter and telephone requirements, the lender shall then send a certified letter, return receipt requested, to the borrower.

To assist our clients in complying with this legislation, we have had our legal counsel prepare some information for you.

- Attached you will find a Due Diligence Procedure Log you may find helpful.
- Also attached is a sample letter for 'first contact' as well as a sample "Affidavit of Mailing".
- It is suggested that to perfect compliance with this regulation, this letter is mailed. While it does not require to be certified or with return receipt requested, the "Affidavit of Mailing" form with its stamp by the post office is highly recommended.
- It is recommended you write down the day, time and name of the individual you talk to.
- If there is no answer, include that in the log. Leaving a message qualifies as an 'attempt'.
- If you do make contact by telephone with the borrower you should assess the borrower's financial situation by discussing
 - Their ability to bring the loan current
 - Explore options for the borrower to avoid foreclosure
 - Advise the borrower they have the right to request a subsequent meeting. (If requested, that meeting shall occur within 14 days.)
 - Inform them there is a toll free number from the United States Department of Housing & Urban Development (HUD) to find a HUD-Certified Housing Counseling Agency at 1-800-569-4287 or TTY/TTD 1-800-877-8229
- Upon passing of 30 days from the First Contact we can record the Notice of Default. At that time we will also be asking you to sign a copy of the attached Form 106 Declaration regarding the type of contact made.

--Your Name, Address, Phone Number Here---

--Date--

--Address of Borrower---

NOTICE PURSUANT TO CALIFORNIA CIVIL CODE § 2923.5

Re: Property Address: --property address---
Borrowers: --borrower name--

Dear --borrower name--:

Your loan referenced above is in default for failure to make the payment due **--date payment due or date entire loan is due--**. Under California Civil Code § 2923.5, before initiating foreclosure, your lender, servicing agent or authorize agent is required to send this letter and to attempt to contact you to assess your financial situation and to explore options to avoid foreclosure.

If you have cured your default, please call me at **--your phone number--** so that I can confirm receipt of your payment. If you have not cured, or are unable to cure, your default, I will be glad to meet with you to assess your financial situation and to explore options for you to avoid foreclosure. We will meet with you and/or your designated agent during our initial contact or, you have the right to request a meeting and, if requested by you, the meeting shall be scheduled to occur within 14 days of that initial contact. You may talk to us directly or through your designated agent who can be a HUD-Certified Housing Counseling Agency, an attorney or an authorized agent who may act on your behalf to discuss options to avoid foreclosure. If you wish to designate an agent, as soon as possible, please complete and return (by e-mail, facsimile or mail) the enclosed form entitled Borrower Designation of Representation (or similar form) to me.

The toll-free number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency is 1-800-569-4287 or TTY/TDD 1-800-877-8339. You may find other useful consumer information on foreclosure alternatives on the HUD website at <http://www.hud.gov/foreclosure/> including an article on "Tips for Avoiding Foreclosure".

While there is no guaranty that there is a foreclosure alternative that will work for you, we prefer to discuss foreclosure alternatives with borrowers whenever possible. You should be aware however that: if you do not contact us or if you refuse to answer our telephone calls to schedule a time for such a discussion, the law allows your lender to proceed with the foreclosure after exercising due diligence in attempting to contact you.

If you would like to discuss your loan or set up a meeting for us to assess your financial situation and to explore options that may be available to avoid foreclosure, please call me.

Very truly yours,

By: _____
---your name--

**BORROWER DESIGNATION OF REPRESENTATIVE
AND AUTHORIZATION TO RELEASE INFORMATION**

----- Date-----

-----Your name-----

-----Your address-----

Borrower: ----Names of all borrowers----

Property: -----Address of subject property----

Loan No: -----If there is a loan number-----

Each of the undersigned Borrower(s) understand that California Civil Code Section 2923.5(f) permits borrower(s) subject to that section to designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the beneficiary (current holder of the subject loan), or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure.

Each of the undersigned designates _____
("Designated Representative") whose telephone number is: _____

To act as Borrower's authorized agent, to discuss, among other things, the Borrower's options to avoid foreclosure as well as any and all matters relating thereto (including, but not limited to, discussing with the Designated Representative the Borrower's loan, financial condition, loan and credit history and the collection of the Lender's debt).

My Designated Representative is (check at least one):

_____ HUD Certified Housing Counsel Agency _____ Licensed California Attorney
_____ Other advisor _____ (Type)

The undersigned Borrower(s) authorize(s) you to release to my Borrower's Designated Representative any and all information regarding my loan, financial condition, loan and credit history and the collection of the Lender's debt. Where there is more than one Borrower, this form may be signed in counterparts. The Lender, loan servicer or their authorized agents may rely on this designation of representative and authorization when a signed original or copy is received by the Lender, loan servicer or by their authorized agent by any means including mail, facsimile or by e-mail. This designation of representative and authorization shall continue unless and until expressly revoked by the undersigned.

BORROWER(S): _____

DATE

DATE

Due Diligence Procedure

KEEP THIS AS A LOG

CONTACT THE BORROWER. The law does not define "contact". A letter mailed by first class postage is preferred and then 3 phone call contacts or attempts are suggested by our counsel.

**GOAL: ASSESS THE BORROWERS FINANCIAL SITUATION; AND
EXPLORE OPTIONS FOR THE BORROWER TO AVOID FORECLOSURE.**

- 1 Send the letter, regular first class, no need for certified or return receipt.
(This starts the 30 day wait period before you can file a Notice of Default.)

Date Letter Sent: _____

2 Weeks From Post Date: _____ *

* The 3 calls/attempts must be made within the 2 week period of the first letter.

- 2 Make first telephone contact attempt.
Document date, time, who you talked to. If contact made, you're done.

- 3 If no contact with first telephone attempt, call a second time *at different time of day*, document call, if no contact. If contact, document, you're done.

- 4 If no contact with second call, make a third attempt at *a different day and time*, document if no contact, you're done. If contact, document, you're done.

- 5 If after the third call/attempt and the two week time period above in #1 has expired, the lender must send a certified letter (contact AAFS for assistance with this letter), with return receipt requested to the borrower.

**BENEFICIARY DECLARATION OF COMPLIANCE WITH (OR EXCEPTION FROM) CIVIL CODE §2923.5
AND AUTHORIZATION OF AGENT (FOR NOTICE OF DEFAULT) AAFS-FORM 106**

**ALL AMERICAN FORECLOSURE SERVICE
1363 MARSH STREET
SAN LUIS OBISPO, CA 93401**

Borrower(s): _____
Beneficiary: _____
Loan Servicer: _____
Property: _____
Loan No.: _____
TS No.: _____

The undersigned beneficiary or authorized agent for the beneficiary hereby represents and declares that [check the applicable box and fill in any blanks so that the trustee/foreclosure agent can insert, on the beneficiary's behalf, the applicable declaration in the notice of default required pursuant to Civil Code § 2923.5]:

1. The beneficiary or beneficiary's authorized agent has contacted the borrower pursuant to, and has complied with, Civil Code § 2923.5(a)(2) (contact provision to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure"). State the date "contact" with the borrower(s) was accomplished pursuant to Civil Code § 2923.5(a)(2): _____, 20____.
2. The beneficiary or beneficiary's authorized agent has exercised due diligence to contact the borrower as required by California Civil Code § 2923.5(g) and, after waiting two weeks after the telephone call requirements of Civil Code § 2923.5(g)(2) were satisfied, the beneficiary or the beneficiary's authorized agent sent to the borrower(s), by certified mail, return receipt requested, the letter required by Civil Code § 2923.5(g)(3), which was *mailed* on: _____, 20____ [state mailing date, not date on the letter].
3. Pursuant to Civil Code § 2923.5(h)(1), the borrower has surrendered the secured property as evidenced by either a letter confirming the surrender or by delivery of the keys to the secured property to the beneficiary, the beneficiary's authorized agent or to the trustee. The surrender letter was received on _____, [date]; the keys were received on: _____ [date].
4. Pursuant to Civil Code § 2923.5(h)(2), the beneficiary or beneficiary's authorized agent has evidence in its file, and reasonably believes, that the borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and to avoid their contractual obligations to beneficiaries.

5. Pursuant to Civil Code § 2923.5(h)(3), the beneficiary or the beneficiary's authorized agent has verified information that, on or before the date of this declaration, the borrower(s) has filed for bankruptcy, and the proceedings have not been finalized. "Finalized" is not defined by § 2923.5(h)(3). For purposes of this Code section, trustee, foreclosure agent and/or their authorized agent is defining the term as: (1) an order entered on the court's docket closing the file by the court; or, (2) an order entered on the court's docket dismissing the bankruptcy case; or (3) an order for relief from stay that states, in effect, that the borrower or authorized agent of the borrower may take any and all actions necessary to comply with Civil Code § 2923.5. (Please attach or send any such orders). If the beneficiary or the beneficiary's agent interprets "finalized" in another manner, please state the basis upon which the beneficiary believes that the bankruptcy has not been "finalized":
- _____
- _____

The undersigned authorizes the trustee, foreclosure agent and/or their authorized agent to sign, on behalf of the beneficiary/authorized agent, the notice of default containing the declaration required pursuant to Civil Code § 2923.5(b).

Dated: _____, 20____.

(Beneficiary's/Authorized Agent's signature)

Print Name: _____