

### **'New' Policy Offers Relief to Underwater Borrowers**

Underwater homeowners who have remained current on their payments will be able to relinquish their houses and cancel their debt under the terms of a new Fannie Mae and Freddie Mac policy change to take effect in March.

Non-delinquent borrowers holding GSE loans with **illness, job changes** or other **valid reasons to move will able to apply for a deed-in-lieu** transaction that erases the shortfall between a **property's value** and the size of **its mortgage**. To qualify, borrowers must have at least a **55% debt-to-income ratio**.

Although news of the GSEs' relief for underwater homeowners made a splash earlier this week, the policy change has been hidden in plain sight for weeks following the publication of new deed-in-lieu servicing guidelines by both Fannie and Freddie in November.

"We want borrowers who have suffered hardship to have access to the appropriate options," said a Fannie spokesman. "These changes will help prevent foreclosures and help borrowers address their mortgage challenges."

**Effective Jan 1, 2013 Homeowners living in California who have fallen  
behind in their loan payments have certain new advantages granted by the new  
CALIFORNIA HOMEOWNER BILL OF RIGHTS**

**Here is a brief outline of the Bill's provisions:**

**Applicability**

- The bill applies only to lenders<sup>1</sup> who conduct more than 175 foreclosure sales per year

**No Dual-Tracking**

- A lender is prohibited from recording a NOD or NOS or conducting a foreclosure sale:
  - While a complete first lien loan modification application is pending, and
  - If a foreclosure prevention alternative (ex: short sale) has been approved
- The bill requires recordation of a rescission of those notices upon execution of a permanent foreclosure prevention alternative

**Single Point of Contact**

- Upon request from a borrower who requests a foreclosure prevention alternative, such as a short sale, a mortgage servicer must:
  - Establish a single point of contact,<sup>2</sup> and
  - Provide the borrower with one or more direct means of communication with the single point of contact

**Notice of Postponement of TTEE Sales**

- The bill requires a written notice to the borrower after the postponement of a foreclosure sale in order to advise the borrower of any new sale date and time

**Short Sale Approvals Binding on Successors**

- Subsequent mortgage servicers are required to honor any previously approved foreclosure prevention alternative

**No Fees Allowed**

- The bill prohibits the collection of application fees and the collection of late fees while a foreclosure prevention alternative is being considered

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<sup>1</sup> Lender = mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent

<sup>2</sup> The bill defines "single point of contact" and specifies the responsibilities of the single point of contact

### **Additional Disclosures Required**

- The bill requires the borrower to be provided with specified information in writing prior to recordation of a NOD and within 5 business days after recordation

### **Loan Modifications**

- The bill establishes additional procedures to be followed regarding a first lien loan modification application, the denial of an application, and a borrower's right to appeal a denial

### **Codification of Existing Law re Foreclosure Process**

- An entity shall not record a NOD or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the DOT, the original or substituted trustee, or the designated agent of the holder of the beneficial interest
- A specified declaration, NOD, NOS, DOT, assignment, substitution of trustee, or declaration/affidavit filed in any court relative to a foreclosure proceeding or recorded by or on behalf of a mortgage servicer shall be accurate and complete and supported by competent and reliable evidence
- Before recording or filing any of those documents, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information

### **Remedies (!)**

- A borrower may seek an injunction and damages for violations of the provisions described above
- The bill authorizes the greater of treble actual damages or \$50,000 in statutory damages if a violation of certain provisions is found to be intentional or reckless or resulted from willful misconduct
- The bill authorizes the awarding of attorneys' fees for prevailing borrowers
- Any mortgage servicer that engages in multiple and repeated violations of these requirements shall be liable for a civil penalty of up to \$7,500 per mortgage or deed of trust, in an action brought by state and local government entities, and would also authorize administrative enforcement against licensees of the DRE

### **Integration w/ the BRE**

- Violations of these provisions by licensees of the BRE would also be violations of BRE licensing laws. Because a violation of certain of those licensing laws is a crime, the bill would impose a state-mandated local program.
- The bill authorizes the BRE to adopt regulations applicable to persons and entities under their respective jurisdictions for purposes of the provisions described above