

CALIFORNIA SENATE BILL 1137

TEN REALITY QUESTIONS & ANSWERS

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- Q1. - When does this bill take effect and become law?
- A1. - SB 1137 passed the California Senate and Assembly as urgency legislation to take effect upon execution by Governor Schwarzenegger. The Governor signed the bill on July 8, 2008 and the statute took effect immediately. However, the new requirements in Section 2 for Notices of Default and Notice of Sale and Section 4 for Notices of Sale become operative 60 days after the effective date, or September 8, 2008.
- Q2. - If I already have a Notice of Default recorded, do I have to start over?
- A2. - No. You can proceed as before the enactment of SB 1137 as long as your Notice of Sale is not posted and published after September 8, 2008. Beware of documents prepared in advance.
- Q3. - What if I have an existing Notice of Default and the Notice of Sale will be after September 8, 2008?
- A3. - If your security is (1) residential owner occupied property on a loan made from January 1, 2003 to December 31, 2007, and the Notice of Sale will be after September 8, 2008, you will need to comply with the Section 2 requirements adding CC §2923.5 for a Notice of Sale declaration of contact or list the efforts made at contact, or (2) if your security is residential property and if the billing address "for the note" is different from the property address, you will need to comply with the Section 4 requirements adding CC §2824.8 for the posting and mailing of the Notice to Residents, regardless if the loan was made between January 1, 2003 and December 31, 2007.
- Q4. - If on September 8, 2009 I already have a Notice of Sale posted and published, can I proceed. with my sale?
- A4. - Yes. Although not specifically addressed in the bill, we are advised that there will be a letter lodged in the Senate Journal stating that the provisions of the bill do not affect a foreclosure subject to an existing Notice of Sale when Section 2 and Section 4 become effective on September 8, 2008. UTA plans to obtain a copy of the exact language of the Senate Journal when available.
- Q5. - If the billing address is different from the property address, where does the trustee get the Spanish, Chinese, Tagalog, Vietnamese and Korean language translations of the

Notice to Residents required to be posted and mailed to the resident of the property with the Notice of Sale if the billing address is different from the property address?

- A5. - The State of California is to provide these translations. The UTA will advise it's membership upon the state making these translations available.
- Q6. - Is there any harm in treating all residential loans assigned for foreclosure as being an owner occupied loan made from January 1, 2003 to December 31, 2007 and complying with the Section 2 requirements adding CC §2923.5, rather than making that determination for each residential loan going into foreclosure?
- A6. - Probably not, however the Section 2 requirements are only for owner-occupied residential properties. You would still have to comply with the new Section 4 requirements of posting and mailing the Notice to Residents in all six languages for loans where the "note address" is different from the mailing address, and the Section 4 notice is regardless of the date when the loan was made.
- Q7. - Is there any harm in treating all foreclosures of loans secured by residential properties as having a "note address" different from the mailing address and complying with the Section 4 Notice to Residences requirement to avoid differentiating between loans?
- A7. Again, probably not. The statute places different foreclosure requirements in Section 2 on owner occupied residential properties with loans made within a certain period than in Section 4 on a residential property with a different billing address regardless of when the loan was made, which can be problematic. It would seem understandable to want a standardized process.
- Q8. - Who is to sign the declaration re Contact, Due Diligence, or Surrender to be included in a Notice of Default filed after September 8, 2008?
- A8. - The beneficiary or their authorized agent. Since all the requirements are to be made at least 30 days prior to initiating foreclosure, the beneficiary or servicer will usually be performing these requirements as part of their pre-foreclosure loss mitigation program. However, this is a complicated question that may require that the trustee consult with experienced legal counsel to integrate this new declaration procedure into its policies, practices and forms. Different trustee's and beneficiaries have different systems relating to who actually signs notices of default, etc and passage of SB 1137 should trigger a review of those policies, practices and forms prior to the September 8, 2008 effective date.
- Q9. - If the trustee-to-be is requested to execute the Section 2 Notice of Default declaration re Contact, Due Diligence, or Surrender as the authorized agent, similar to the execution of many current Notices of Default, will it affect the trustee's ability to claim the protections of Civil Code §2924I to file a Declaration of Nonmonetary Status in a subsequent civil action?
- A9. - Not by merely executing the declaration. Civil Code §294I protects the trustee and the acts of an authorized agent performing duties within CC §2924, *et. seq.* and named in a

civil action. However, the authorized agent would be relying upon the beneficiary or their servicer as to the validity of the declaration and any authorized agent should review their power of attorney or agency documents and may wish to consult their legal counsel regarding indemnification.

Q10. - Can the Section 2 declaration required re Contact, Due Diligence, or Surrender to be included in the Notice of Default be added to the language of the Notice of Default or does it have to be a separate declaration?

A10. There is no requirement in SB 3711 that the Notice of Default declaration re Contact, Due Diligence, or Surrender be a separate document, or that it be notarized.

DISCLAIMER - The above Questions and Answers are intended as guidelines for the UTA membership regarding the implementation of the new statute and are not to be construed or relied upon as the offering of legal advice by the author or the United Trustees Association. Each trustee should consult with its own legal counsel to determine how to implement the changes mandated by the passage of SB 1137.