

California Foreclosure Prevention Act FAQs for Consumers

Source: Department of Corporations <http://www.corp.ca.gov/>

1. WHAT IS THE CALIFORNIA FORECLOSURE PREVENTION ACT (CFPA)?

Governor Arnold Schwarzenegger signed the CFPA into law on February 20, 2009. The CFPA was proposed by the Governor to help address the problem of increasing foreclosures in California during the current economic downturn.

2. WHAT DOES THE CFPA DO?

The CFPA extends the foreclosure process by 90 days unless a lender or mortgage loan servicer obtains an exemption from the 90 day stay. The lender or mortgage loan servicer applies for the exemption with a state department. If the lender or mortgage servicer demonstrates to the state department that it has a comprehensive loan modification program offered to borrowers, and designed to keep them in their homes, the lender or mortgage loan servicer is exempt from the 90 day delay of foreclosure. The law is designed to encourage more loan modifications that keep borrowers in their homes.

3. WHAT BORROWERS ARE ELIGIBLE FOR THE ADDITIONAL 90 DAYS IN THE FORECLOSURE PROCESS?

The CFPA does not operate on the basis of borrower eligibility. Instead, the CFPA is directed at the mortgage loan servicers. In general, a borrower is eligible for an additional 90 days in the foreclosure process if:

- The borrower's lender/servicer has not obtained an order of exemption from the state;
- The borrower obtained the loan between January 1, 2003 and January 1, 2008;
- The loan in default is the first mortgage or deed of trust on the property;
- The borrower occupies the property as his or her principal residence;
- The borrower has not surrendered the property to the mortgage loan servicer;
- The borrower has not contracted with a business advising people who have decided to leave their homes regarding how to extend the foreclosure process, and
- The borrower has not filed for bankruptcy.

4. IF THE BORROWER AND LOAN QUALIFY FOR A LOAN MODIFICATION, WHAT TYPE OF MODIFICATION WILL THE BORROWER RECEIVE?

The CFPA does not dictate every type of modification program, but does provide a general framework for types of modifications to be used. In general, when modifying a loan, a mortgage loan servicer must seek to reduce monthly payment in an effort to make the modified payments affordable for a borrower. Typically, affordability is met if the lender/servicer's program targets a housing-related debt-to-income ratio of 38% for borrowers.

While a sustainable loan modification may be different for different borrowers, the potential ways a loan may be modified include any of the following:

- An interest rate reduction, as needed, for a fixed term of at least 5 years.
- An extension of amortization period for the loan term, for up to 40 years from the original date of the loan.
- Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan.
- Reduction of principal.

5. MUST A MORTGAGE LOAN SERVICER WITH A COMPREHENSIVE LOAN MODIFICATION PROGRAM MODIFY EVERY LOAN?

Not every loan is subject to modification. Not every home can be saved from foreclosure. The law is designed, however, to prevent unnecessary foreclosures for those borrowers who need help, and whose loans can be modified.

6. WHAT IF A MORTGAGE LOAN SERVICER DELAYS ACTING ON A LOAN MODIFICATION REQUEST AND CAUSES A BORROWER'S HOME TO GO TO SALE?

The CFPA rules provide that a mortgage loan servicer may not harm a borrower by failing to act on a request for a loan modification.

7. IF A BORROWER RECEIVED A NOTICE OF DEFAULT BEFORE JUNE 15, 2009, IS THE BORROWER ENTITLED TO THE ADDITIONAL 90 DAYS?

If the borrower has received a Notice of Default but not received a Notice of Sale prior to the operative date of the law (June 15, 2009), the borrower is entitled to the additional 90 days in the foreclosure process if a servicer has not established that it has implemented a comprehensive loan modification program and received an order of exemption from the Commissioner. However, if the servicer subsequently establishes a program and applies for an

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exemption, the Civil Code provides that a servicer is immediately exempt from the requirement that it provide a borrower an additional 90 days in the foreclosure process, and therefore a borrower will no longer be entitled to the additional 90 days.

8. IF A SERVICER DOES NOT RECEIVE AN ORDER OF EXEMPTION UNTIL A TIME AFTER THE BORROWER WAS ISSUED A NOTICE OF DEFAULT, IS THE BORROWER ENTITLED TO AN ADDITIONAL 90 DAYS IN THE FORECLOSURE PROCESS?

No. The Civil Code provides that the servicer is exempt from the requirement that it provide an additional 90 days in the foreclosure process upon the receipt of a temporary (or final) order, and therefore a borrower would no longer receive the additional 90 days.

9. IF A BORROWER HAS RECEIVED A NOTICE OF SALE, MAY THE BORROWER ALSO BE ENTITLED TO THE ADDITIONAL 90 DAYS?

The additional 90 days is only applicable to the time period after the filing of the Notice of Default. If the law became operative after a borrower has received a Notice of Sale, the borrower is not entitled to an additional 90 days in the foreclosure process.

10. IF A MORTGAGE LOAN SERVICER FAILS TO SEEK AN EXEMPTION ON THE OPERATIVE DATE OF THE LAW, DOES THE BORROWER AUTOMATICALLY RECEIVE THE ADDITIONAL 90 DAYS IN THE FORECLOSURE PROCESS?

A mortgage loan servicer may apply for the exemption at any time, and upon receiving a temporary order of exemption (upon filing the application), the statute provides that the servicer is exempt from the requirement that the servicer provide an additional 90 days in the foreclosure process. Consequently, a borrower will no longer have an additional 90 days in the foreclosure process upon the mortgage loan servicer receiving an exemption.

11. WHERE ARE THE LEGAL PROVISIONS OF THE CFPA FOUND?

On February 20, 2009, the Governor, signed ABX2 7 and SBX2 7, which established the California Foreclosure Prevention Act in the Civil Code. On June 1, 2009, Subchapter 14 was added to Chapter 3, Title 10 of the California Code of Regulations (CCR). These emergency regulations clarify the application of Sections 2923.52 and 2923.53 of the Civil Code.

The law and rules are available on our website or can be found at www.leginfo.ca.gov or www.oal.ca.gov.

12. WHAT IS THE OPERATIVE DATE OF THE CFPA?

Beginning June 15, 2009 all mortgage loan servicers who have not applied for an exemption are required to wait an additional 90 day period before filing the Notice of Sale when foreclosing on a residential mortgage loan meeting the criteria established in Civil Code Section 2923.52(a). However, a mortgage loan servicer may obtain an exemption from the 90 day requirement at any time by implementing a comprehensive loan modification program and obtaining an exemption.

13. WHO IS SUBJECT TO THE CFPA?

All entities that service residential mortgage loans on properties located in California are subject to the CFPA. This includes companies licensed by the Department of Corporations, Department of Financial Institutions, the Department of Real Estate and any other entity that services loans on properties located in California, such as national banks.

14. HOW CAN A BORROWER DETERMINE WHETHER HIS OR HER MORTGAGE LOAN SERVICER HAS OBTAINED AN EXEMPTION UNDER THE CFPA?

A list of mortgage loan servicers that have obtained an exemption under the CFPA will be posted on the Department of Corporations website at www.corp.ca.gov after June 15, 2009.

15. HOW CAN SOMEONE ASSERT VIOLATIONS OR LACK OF COMPLIANCE WITH CFPA?

The public may contact the Department of Corporations at 1-866-ASK-CORP to report complaints about compliance with the CFPA, and the department can assist the public in determining which state department is responsible for a particular lender or mortgage loan servicer.

16. WHERE CAN THE PUBLIC OBTAIN ADDITIONAL INFORMATION?

The public may contact the Department of Corporations at 1-866-ASK-CORP

