



California's Latest License For Borrower Abuse: 45-Day Sale Postponements!

By T. Robert Finlay, Esq. and Michelle A. Mierzwa, Esq. of Wright, Finlay & Zak, LLP

Each year, the California Legislature considers hundreds of new bills, many of which are intended to help borrowers in distress. While the laws are well intended and, in some instances helpful, many create open invitations for abuse. AB 2424, enacted in 2024 and codified into Civil Code §2924f effective January 1, 2025, is unfortunately one of those laws.

With respect to residential real property containing no more than four dwelling units, Civil Code §2924f gives borrowers in foreclosure the unilateral right to postpone the foreclosure sale for 45 days upon delivery of a compliant listing agreement for sale and, again, for up to another 45 days upon execution of a purchase agreement. To take advantage of the first 45-day postponement, borrowers need only submit a signed listing agreement, showing that the property is listed for sale with a licensed real estate agent to be placed in a publicly available marketing platform for the sale of the property at least five business days before the scheduled date of sale. The listing price is irrelevant, meaning that the servicer must postpone the foreclosure sale for 45 days to give borrowers the opportunity to market the property for sale even if it is listed for sale at a price far below the liens on the property. In some instances, borrowers legitimately use the 45-day period to close escrow or enter into a purchase agreement. Unfortunately, far too many borrowers, with the help of naïve or complicit real estate agents, grab the 45-day postponement with no true intention and/or realistic possibility of selling the property.

Servicing note – *So long as the listing agreement is with a licensed real estate agent and is received by the foreclosure trustee at least five business days before the scheduled foreclosure sale, the servicer really has no choice but to postpone the sale for at least 45 days.*

After obtaining the initial 45-day sale postponement, the borrower can obtain *another* postponement of

approximately 45 days by delivering a fully-executed purchase contract for an amount sufficient to pay off all outstanding liens encumbering the property.

Servicing Notes – *The servicer may have some discretion to deny the 2nd 45-day postponement, but this comes with risks.*

- In addition to having to be received by the foreclosure trustee at least five business days before the scheduled foreclosure sale, the purchase agreement must be *signed* by both parties, including the buyer. If the purchase agreement is unsigned by either party or received less than 5 business days before the scheduled foreclosure sale, the servicer is not required to postpone the sale for the additional 45 days from receipt of the purchase agreement.
- The second postponement opportunity upon purchase agreement is *only* available to borrowers who took advantage of the mandatory 45-day postponement after providing a compliant copy of the listing agreement. Arguably, the servicer would not be required to postpone the sale at all if a borrower submits a fully executed purchase agreement without previously providing the listing agreement. That said, providing one discretionary (voluntary) 45-day postponement to allow a fully-executed purchase contract to close is prudent, even if the borrowers did not technically comply with the listing agreement prerequisite to obtain a mandatory statutory purchase agreement postponement.
- In addition, the sale price identified in the purchase agreement must be sufficient to pay off all the liens encumbering the property, including any junior liens. In other words, if the purchase agreement identifies a purchase price of \$1,000,000.00, but the first lien loan servicer knows that \$800,000.00 is owed on its lien and



State News

- that another \$350,000.00 is owed on the second lien, the servicer can refuse to postpone the sale for the additional 45 days. However, the servicer should be careful if it does not know the exact amount owed on the other liens or if the purchase agreement sale price is close to the servicer's estimate of the outstanding liens.
- While the initial 45-day postponement due to listing agreement runs from the scheduled foreclosure sale date, the second 45-day postponement due to purchase agreement runs from the date a satisfactory purchase agreement is delivered to the foreclosure trustee. In other words, if the original foreclosure sale is set for 1/1/27 when the servicer receives the signed listing agreement, the sale must be postponed to 2/15/27 or later. Assuming the servicer then receives a compliant sales contract on 2/1/27, it must only postpone the sale 45 days to 3/18/27 or later (assuming no leap year). Of course, if the purchase agreement is legitimate and the borrower needs additional time to close escrow and pay off the loan, the servicer may choose to postpone for longer, using its discretion.

While many borrowers have used one or both of the 45-day postponements to legitimately list the property, close escrow and payoff the secured debts, just as many borrowers (or more) have abused these well-intended laws by submitting fraudulent listing and purchase agreements or agreements with no true intent to sell the property and/or realistic chance of selling the property for an amount sufficient to pay off all liens.

Final Note – While the postponement provisions in Civil Code section 2924f apply to residential real property containing up to four dwelling units regardless of loan type, for consumer loans, servicers must wait a minimum of 120 days before recording the Notice of Default and then another 90 days before recording the Notice of Sale. Most foreclosure sales are then set roughly 30 days later. In total, a defaulted borrower under a consumer loan will likely have a minimum of 240 days (120+90+30) between missing a payment and the initial foreclosure sale date. If

needed, borrowers now have the opportunity to receive an additional 90 days under Civil Code section 2924f(e), bringing the total time to sell the property by foreclosure sale or voluntary sale to pay off the defaulted loan to approximately 330 days! For private loan investors, waiting 330 days can create significant hardship, especially if the investor is on a fixed income. For distressed borrowers, those 330 days can elapse quickly. Acting early, rather than waiting until the foreclosure sale is scheduled to list the property, may be the most prudent option for borrowers in default.



Mr. Finlay is at the forefront of the mortgage banking industry, handling all aspects of the ever-changing default servicing and mortgage banking litigation arena, including compliance issues for servicers, lenders, investors, title companies and foreclosure trustees. He can be reached at rfinlay@wrightlegal.net.



Michelle A. Mierzwa joined Wright, Finlay & Zak's Compliance, Licensing and Regulatory Division in 2015. She also serves as corporate counsel for UTA. She can be reached at mmierzwa@wrightlegal.net

Disclaimer: The above information is intended for information purposes alone and is not intended as legal advice. Please consult with counsel before taking any steps in reliance on any of the information contained herein.