

SB 1137 became effective July 8th as an urgency measure. However, requirements pertaining to the notice of default and the posting and mailing of an entirely new notice will not become operative until 60 days after the effective date.

The provisions of the new law outlined below apply to loans secured by owner occupied residential real property and made between January 1, 2003 and December 31, 2007. These provisions will remain effective until January 1, 2013. The requirements are extensive and the full act text should be consulted for details.

1. A Notice of Default (NOD) may not be filed by the trustee or lender until 30 days after contact is made in person or by telephone with a borrower to assess their financial situation and explore options to avoid foreclosure, or until 30 days after satisfying specified due diligence requirements.
2. During the initial contact the borrower must be advised of the right to request a subsequent meeting. If a meeting is requested then it must be scheduled within 14 days.
3. An assessment of the borrower's financial situation and discussion of options may occur at the first contact or at the subsequent meeting, but in either case the borrower must be provided a toll-free number for HUD certified housing counseling agencies.
4. A NOD must include a declaration that the borrower has been contacted or due diligence has been used to try to contact the borrower or that the borrower has surrendered the property. Due diligence includes having a link to information on the options to avoid foreclosure on the web site of the beneficiary or their agent.
5. If a NOD was filed prior to the effective date of the new law, without a subsequent notice of rescission, then a new declaration must be included as part of the notice of sale. The declaration must state that the borrower either was contracted to assess their financial situation and explore options to avoid foreclosure or that no contact occurred; in which case the efforts made to contact the borrower must be listed.
6. A NOD may be filed when a borrower has not been contacted as required by the new law if the failure to contact the borrower occurred despite the due diligence of the lender or their agent. The actions that constitute due diligence are listed in the new law.
7. A new notice has been created by the law and must be posted and mailed at the same time a notice of sale is posted. The notice advises residents that the property may be sold and that their right to continue to reside in the property may be affected, along with certain other information.