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## SENATE BILL NO. 1137

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Senate Bill 1137 went into complete effect in September 2008 as California Civil Code §2923.5 and, among other things, requires a lender take certain actions before starting foreclosure proceedings on *owner-occupied residential property* containing no more than four dwelling units. Owner-occupied means that the residence is the principal residence of the borrower as indicated to the lender on the loan documents. This law only applies to loans that originated in the years 2003 through 2007. Additionally, it does not apply if the borrower has surrendered the property to the lender by either a letter confirming the surrender or delivery of the keys to the property to the lender or if other exemptions apply.

The law requires that lenders make contact with the borrower and provide certain information to him or her. If contact cannot be made, then the lender must meet certain “due diligence” requirements.

### Option 1: Making Contact

A lender must contact the borrower in person or by telephone and:

- ▲ Assess the borrower’s financial situation and explore options to avoid foreclosure;
- ▲ During the initial contact advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the lender shall schedule the meeting to occur within 14 days; and
- ▲ Provide the borrower with the toll-free telephone number to a HUD-certified housing counseling agency. As of March 2009 the HUD website provided various contact numbers including (800) 569-4287 and (800) 569-4287.

A notice of default cannot be filed until 30 days after the initial contact was made.

### Option 2: “Due Diligence”

A notice of default can be filed when a lender has not contacted the borrower provided that failure to contact the borrower occurred despite the due diligence of the lender to do so. “Due diligence” means doing all of the following:

- ▲ A lender shall first attempt to contact the borrower by sending a first-class letter that includes the toll-free telephone number to a HUD-certified housing counseling agency. As of March 2009 that number was 1-800-569-4287.
- ▲ After the initial letter has been sent, the lender shall attempt to contact the borrower by telephone at least three times at different hours and on different days. This requirement is satisfied if the borrower’s primary and secondary number or numbers on file, if any, have been disconnected.
- ▲ If the borrower does not respond within two weeks after the telephone call requirements have been met, the lender shall then send a certified letter with return receipt requested.

- ▲ The lender shall provide a means for the borrower to contact it in a timely manner including a toll-free telephone number that will provide access to a live representative during business hours.
- ▲ The lender shall post a prominent link on the homepage of its internet website, if any, to the following information:
  - Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore these options.
  - A list of financial documents borrowers should collect and be prepared to present to the lender when discussing options for avoiding foreclosure.
  - A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their lender
  - The toll-free telephone number to a HUD-certified housing counseling agency

A notice of default cannot be filed until 30 days after the final letter has been sent.

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