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INFORMATIONAL HEARING

THE HOMEOWNER BILL OF RIGHTS (SB 900/AB 278): AN IMPLEMENTATION UPDATE

FINAL SUMMARY REPORT

November 2013



INTRODUCTION

The Senate Banking and Financial Institutions Committee held its first informational hearing of the 2013-14 Legislative Session on Tuesday, October 1st, 2013 from 9:05 AM to approximately 1:10PM PM in Room 107 of the Rancho Santiago Community College District Building at 2323 North Broadway, Santa Ana, California. The hearing, titled "The Homeowner Bill of Rights (SB 900/AB 278): An Implementation Update" included testimony from 16 invited witnesses. Two Committee members attended the hearing, including Chairman Lou Correa and Senator Ron Calderon. The hearing attracted approximately 50 attendees. An unknown number of additional individuals watched the hearing via a live webcast made available through Chairman Correa's Internet web site.

As described by Chairman Correa in his opening remarks, the hearing was designed to provide the Committee and other interested members of the public with a status update on two very significant pieces of legislation enacted during July, 2012, which collectively have become known as the Homeowner Bill of Rights.

SB 900 and AB 278 enacted comprehensive mortgage servicing reforms, implemented several new borrower protections, and modified California's nonjudicial foreclosure process. Supporters of SB 900 and AB 278 believed that the bills would cut through the red tape with which borrowers had been struggling for years and help borrowers work constructively with their servicers to explore options for avoiding foreclosure. Both bills were supposed to end the dual-track process, ensure that borrowers were assigned servicer personnel knowledgeable about their situations, require servicers to provide borrowers with written determinations on their loan modification applications, and give borrowers a chance to temporarily stop the foreclosure process if servicers failed to comply with the new rules.

Opponents of the bills believed they would reward strategic defaulters, delay the nonjudicial foreclosure process, lead to frivolous litigation, complicate servicers' compliance efforts, and increase servicers' compliance costs.

The October 1st hearing sought testimony from borrower advocates, servicers, attorneys, regulators, and economists to see whether either prediction came true and get an initial sense for how the bills are working so far.

This report contains the staff summary of the hearing, written material and remarks submitted by hearing witnesses (Appendix A), and reproduces the agenda and background paper (Appendix B). Written copies of this final paper can be downloaded from the Committee's website. Hard copies are available at no charge in Room 405 of the State Capitol or by phoning (916) 651-4102. Individuals wishing to watch the hearing will find an archived copy of the webcast on the Senate Banking and Financial Institutions Committee's web site (<http://sbnk.senate.ca.gov/hearings>).

REPEATED THEMES

During the hearing, several topics were raised by multiple witnesses. These topics include:

Assembling A Complete Mortgage Loan Modification Application: Housing advocates and others who work with consumers expressed frustration at the lack of uniformity in what constitutes a complete mortgage loan modification application. The requirements differ from servicer to servicer, and sometimes from borrower to borrower when the same servicer is involved. Servicers were criticized by multiple witnesses for lack of clarity in their written communications with borrowers regarding what documents or portions of documents are necessary to complete an incomplete loan modification application. Letters informing borrowers that more or different information is needed lack the detail necessary for borrowers and their advocates to understand what, exactly, is missing or incomplete.

On the flip side, servicers are frustrated at the delays they encounter in obtaining what they view as simple paperwork from borrowers, and at the tendency among some borrowers to wait until very late in the foreclosure process to submit complete loan modification application packages. Anti dual-tracking provisions in the Homeowner Bill of Rights (HBOR) require servicers to halt the foreclosure process once they receive a complete loan modification application, which causes delays in the nonjudicial foreclosure process.

Documenting A Material Change in A Borrower's Financial Circumstances:

Borrower advocates and servicers expressed confusion over the provisions of SB 900 and AB 278 that allow borrowers who have been denied a loan modification the opportunity to reapply for a modification, if they experience a material change in their financial circumstances. Neither borrowers, borrower advocates, nor servicers know what constitutes a "material change." Some borrowers are reapplying for loan modifications without having experienced any change in their circumstances; some are re-applying and claiming a material change, without submitting paperwork documenting that change; and some servicers are delaying the foreclosure process to re-evaluate borrowers who re-submit paperwork, without knowing whether the borrower's change in circumstances is sufficiently "material" to warrant the re-evaluation (though opting to perform the re-evaluation in order to minimize litigation risk).

Transfers of Servicing Rights

Several large mortgage servicers have recently sold the servicing rights to a significant number of mortgages. Nationstar and Ocwen are among the purchasers of these servicing rights, as are several smaller servicers that were not named by hearing witnesses. These transfers of servicing rights have created problems for borrowers. Among the problems cited by witnesses: The smaller servicers who are purchasing servicing rights often lack advocacy portals such as those employed by larger servicers

for use by housing counselors and other borrower advocates to escalate problems. When servicing rights are transferred before a written loan modification agreement is reached between a servicer and a borrower, borrowers must often re-start the loan modification application process from the very beginning with their new servicer. Even when written loan modification agreements have been reached prior to transfers of servicing rights, there can be delays in transferring the paperwork surrounding those agreements. Paperwork regarding loan modifications and other forms of loss mitigation may not be transferred along with the servicing rights, or there may be a significant time delay between transfer of servicing rights and transfer of paperwork.

Litigation Risk Under HBOR

Although the bills had only been operative for nine months as of the date of the hearing, witnesses were aware of several lawsuits that had been filed against servicers, alleging HBOR violations, and of several demand letters that had been sent to servicers, threatening HBOR litigation, if money was not paid to the plaintiff's attorney to prevent a lawsuit. To date, it appears that several borrowers have obtained temporary restraining orders and preliminary injunctions delaying foreclosure sales. Some courts have awarded plaintiffs attorneys' fees and costs at these stages; other courts have not. Some courts are requiring borrowers to post bonds in order to go to trial; others are not. None of the witnesses was aware of any court proceeding that had been decided, beyond the preliminary injunction stage. Some foreclosing beneficiaries have voluntarily rescinded foreclosure sales, after having been made aware of HBOR violations that occurred prior to the foreclosure.

The Committee was unable to hear from a witness who was supposed to have testified about litigation against bonafide purchasers of foreclosed properties, because he was called away unexpectedly on the day of the hearing. Anecdotally, however, Committee staff is aware of lawsuits that have been filed against third party purchasers following foreclosure auctions of those properties, which has delayed their ability to acquire title to the properties.

STAFF SUMMARY OF WITNESS TESTIMONY

The summaries that follow are intended to provide readers with a *limited* review of oral testimony offered during the hearing, together with some of the key questions posed of witnesses by Committee members and the answers provided. These summaries are not comprehensive; those seeking a more comprehensive sense for the testimony are directed to the archived webcast of the hearing, which can be accessed at <http://sbnk.senate.ca.gov/hearings>.

Panel One: Economic and Housing Impacts of SB 900 and AB 278

The full presentations of Dr. Hepp and Mr. O' Toole are included in Appendix A.

Dr. Selma Hepp, Senior Economist, California Association of Realtors

The California Association of Realtors (CAR) has documented a year over year decrease in sales of single family homes in California, and a year over year increase in sales of condominiums. Home sales are down, but home prices are up. In some places, such as the San Francisco Bay Area, prices have returned to levels they reached during the height of the housing boom.

Sales of distressed properties, including sales of bank-owned (REO) properties and short sales, are down significantly in 2013, relative to prior years. REOs sales are down 70% year over year, and short sales are down 58%. Equity sales are now about 80% of the market across California. It's hard to tell whether the decline in sales of distressed properties is due to HBOR. Some of the change could be due to an improving market (i.e., fewer sales are "short"). There is also much less REO inventory. In addition, investors are increasingly buying and holding the properties they are purchasing, rather than flipping them. Some of the decline in sales that CAR is seeing may also be a function of the data sources the trade association uses. CAR only tracks Multiple Listing Service (MLS) sales. To the extent that more sales are being made off-MLS (i.e., private sales), CAR could be missing some of the sales that are occurring.

Inventory is still very tight. Inventory of non-distressed property is currently 3 months. REO sales inventory is currently two months. An influx of international buyers is one reason that inventory is so low. California is also experiencing the lowest construction levels in 25 years. Furthermore, as noted above, the choice of many investors to buy and hold rather than to buy and flip, and a reduction in the number of foreclosed properties coming onto the market, are also pushing down the availability of inventory.

Sean O'Toole, Founder and CEO, Property Radar

Foreclosure filings are way down during 2013. Notice of default (NOD) filings are down 49% year over year.

State and federal anti-foreclosure efforts have caused several drops in NOD filings since 2008, but most of those drops were subsequently followed by rebounds. The current drop in foreclosure filings seems to be longer-term in duration.

Prior to the foreclosure process, time to foreclose was about 130 to 140 days. Time to foreclose began increasing significantly during 2008. Mr. O'Toole expressed the opinion that the federal shift to "mark-to-model" accounting probably had the single biggest impact on foreclosures of any other change. In response to questions from Chairman Correa, Mr. O'Toole explained that "mark-to-model" was a change implemented in 2009 by the Federal Accounting Standards Board. This change allowed banks to value their loan assets at higher values than the values they had previously been required to use. By allowing banks to attribute higher values to distressed loans, the accounting change dramatically slowed the foreclosure process.

Part of the reason behind the increasing time to foreclose is also due to California's nonjudicial foreclosure rules and the changes to those rules enacted by California since 2008. Mr. O'Toole expressed the opinion that California has the most consumer-friendly foreclosure process in the world.

One of the reasons it's hard to decipher the impact of HBOR on number of foreclosures and length of time to foreclose during 2013 is the overlay of an OCC letter issued in May of 2013, admonishing banks to use more caution during the foreclosure process. Mr. O'Toole believes that this letter likely delayed certain foreclosures, as banks re-reviewed their procedures in response to the OCC letter.

Generally speaking, banks foreclose far more quickly on lower-priced properties than on higher-priced properties. This, too, is likely a result of mark-to-model accounting. Banks are more likely to want to clean up their books by taking losses on lower-priced properties.

Prior to 2009, almost all properties that were foreclosed on went back to the bank, which led to talk of a shadow inventory. By the end of 2009, investors came in, and that inventory was gone. We haven't had a problem with a bank-owned shadow inventory since. Beginning in 2009, banks started lowering their opening bids at foreclosure auctions, which attracted more third party buyers. In 2011, institutional investors started coming in and purchasing at trustee sale auctions in large numbers.

2012 was the year of the short sale, in part because the national mortgage settlement gave banks credit for short sales. Short sales have declined significantly in 2013, not (in Mr. O'Toole's opinion) because the market improved, but because servicers' requirements under the national mortgage settlement have been fulfilled, and because of California's decision not to extend state income tax relief for debt forgiven during short sales.

Mr. O'Toole believes that California's biggest problem resulting from the foreclosure crisis is negative equity – a problem that continues to this day, even as the number of foreclosure filings is declining. 20% of homeowners with a mortgage are currently underwater. 13% are significantly underwater. 340,000 households that are underwater are not making their payments.

As bad as foreclosures are, they do have the advantage of eliminating negative equity. Short sales and principal reduction loan modifications are better ways out, but all three eliminate negative equity.

In answer to a question from Chairman Correa about how long it will take California to eliminate our negative equity, Mr. O'Toole stated that elimination of negative equity is a double-edged sword. For housing prices to rise to the levels that would eliminate negative equity, without losing affordability, we would need to see 100% wage inflation. Without significant wage inflation, affordability declines as prices go up. If we were to

eliminate the negative equity among people who are significantly underwater, we'd be in another housing bubble.

HBOR has had a significant impact on the number of foreclosure sale cancellations, through its elimination of dual tracking. Cancellations on the schedule day of a foreclosure sale have gone way down since enactment of HBOR, which suggests that sales are only being scheduled, once the lender is sure it will go forward with the sale on the scheduled sale date. Reductions in the number of sale day cancellations are also helping third party investors, by reducing the number of times they show up to a sale, only to see a property on which they wish to bid pulled from the auction at the last minute.

Panel Two: Oversight of HBOR Implementation: A View from the Sponsor's Grantees and California's Primary Lending Regulator

Katherine Porter, California Monitor, National Settlement Agreement

Professor Katherine Porter, speaking on her own behalf and not on behalf of Attorney General Harris, began by providing a status update of servicers' compliance with the national mortgage settlement. California has received 41% of the total relief provided nationwide by the five signatories to the national mortgage settlement (Bank of America, Wells Fargo, JPMorgan Chase, Citi, and Ally). To date, California has received \$18 billion in relief. About half that relief reflects short sales, and half reflects first and second lien forgiveness. Professor Porter reviewed the data and does not believe that the national settlement or the separate California-specific settlement caused a dramatic uptick in the number of short sales; short sales were being approved at similar rates before and after the settlement.

Professor Porter's office only works with borrowers whose loans are serviced by the five financial institutions that were signatories to the national mortgage settlement. At the present time, there is no centralized location available for use by borrowers whose loans are serviced by other servicers. Consumer complaints received by the Attorney General's office are currently referred to non-profit housing counselors, legal aid societies, or the Consumer Financial Protection Bureau. This fall and next spring, Professor Porter will work with the AG's office on expanding their capabilities to provide more personalized assistance to borrowers who contact their office, whose loans are serviced by financial institutions other than the five settlement signatories.

Professor Porter and her staff are seeing some significant improvements in servicer treatment of borrowers, due to what she believes is a combination of the mortgage settlement and HBOR. Fewer documents are being lost by servicers, there is less dual-tracking once a complete loan modification application is submitted, there are fewer instances of inconsistent information being provided over the phone by different representatives of the same servicer, more loan modifications are being offered in writing, and more loan modifications are being converted from trial to permanent. Again, though, these observations relate only to experiences of borrowers whose loans

are serviced by the five signatories to the settlement agreement. Professor Porter could not speak to the experiences of borrowers whose loans are serviced by other financial institutions.

Areas where Professor Porter and her staff are seeing the most problems involve document collection from borrowers (different servicers are asking for different documents from borrowers – there is no fixed checklist used by most servicers; there is also very poor communication from servicers to borrowers about exactly what documents must be submitted, and, when documents are missing, which documents are missing), misunderstandings among borrowers about their rights under HBOR, inconsistent information being provided to borrowers via single points of contact and through the mail (borrowers' single points of contact say one thing, and written correspondence from servicers says something else), and lack of continuity following transfers of servicing rights (the transfer of servicing rights is a very opaque process to homeowners – homeowners often don't know when their loan has been sold and when it is merely being subserviced; master servicers are also having a difficult time keeping track of what their subservicers are doing).

Kent Qian, Attorney, National Housing Law Project

The National Housing Law Project helps consumer attorneys file HBOR litigation. Mr. Qian is aware of at least 40 to 50 lawsuits that have been filed against servicers, but acknowledged in his testimony that he is unable to follow all of the HBOR litigation. He encouraged interested parties to view his testimony as a snapshot rather than a comprehensive summary of all HBOR litigation being filed.

With respect to the cases about which he is aware, almost all of the cases were filed prior to foreclosure. It can be hard for borrowers to find attorneys to take cases following a foreclosure, because post-foreclosure relief only provides for actual economic damages. Most of the cases about which Mr. Qian is aware were filed in state court. Defendants in these cases are typically large servicers; most are among the five signatories to the national mortgage settlement. Mr. Qian is not aware of any suits filed against bonafide purchasers of foreclosed properties.

Courts have been granting injunctions under HBOR, but decisions have hinged on whether a complete loan modification application has been filed by a borrower. Courts have denied injunctions when the borrower did not have a complete loan modification application on file with their servicer. Even when the courts are granting relief, many courts are requiring homeowners to post bonds (sometimes as high as \$25,000 to \$30,000) as a condition of that relief. If a borrower cannot afford to post the bond, the injunction is dissolved. It is too early to tell yet whether courts are awarding attorneys' fees to prevailing plaintiffs. It's not clear when attorneys fees can be awarded, nor when they should be requested.

Often, cases are settled after injunctions are granted, when servicers correct their errors. Mr. Qian believes that most are settled rather quickly.

In response to questioning from Senator Calderon, Mr. Qian said that he is unaware of the extent to which servicers are utilizing the "right to cure" that was contained in SB 900 and AB 278. Most attorneys contact him only after they file suit. Professor Porter stated that her office utilizes the right to cure quite frequently. She is often able to obtain a temporary postponement of a foreclosure sale after bringing a borrower concern to the attention of a servicer.

John Hanna, General Counsel, Department of Business Oversight

The Department of Business Oversight (DBO) has not taken enforcement actions against any of its licensees for violations of SB 900 and AB 278. The Department has identified some violations of the bills during its examinations, many of which involved lack of documentation regarding the licensees' efforts to comply. When violations are identified, licensees are notified and given 30 days in which to correct those violations. Licensees who commit repeated violations are examined more frequently. DBO has provided information to its licensees, which is intended to help them understand their new responsibilities under HBOR. It has also offered education to consumers about their new rights.

Year to date during 2013, the Department received 213 complaints about loan modifications and foreclosures. Of those, 20 complaints were specific to HBOR issues. Twelve of those complaints are still under investigation. Eight were investigated to completion, most involving dual tracking violations. Of these eight, five were decided in favor of the servicer, and three were decided in favor of the borrower and resulted in the borrowers receiving loan modifications.

A copy of Mr. Hanna's testimony is included in Appendix A.

Panel Three: How Are Borrowers Faring: Consumer Perspectives

Debra Zimmerman, Staff Attorney, Bet Tzedek Legal Services

As a real estate fraud attorney, Ms. Zimmerman has been working on borrower cases involving loan modifications and foreclosures since the beginning of the mortgage crisis in 2007. Bet Tzedek is the lead agency in a coalition of five legal services organizations that received a Community Assistance Grant from the Attorney General's office. Ms. Zimmerman tries to help borrowers make sense of what resources are available to them and pair them with the services they need most – something she could not have done without the help of the Community Assistance Grant from the Attorney General's office.

Mr. Zimmerman feels that HBOR has had a beneficial effect on borrowers in the area of dual tracking. However, the borrowers she helps are continuing to face a significant number of problems, many of which were problems back in 2007. For example, advocacy portals previously made available to housing counselors and other borrower advocates aren't working well anymore. Part of this is a result of transfers of servicing

rights. Ocwen and Nationstar, which have assumed many mortgages from the five largest servicers ("the big five"), don't have the same commitment to California as the big five. Servicing rights are being transferred to servicers that lack advocacy portals.

Significant numbers of servicing transfers are also forcing borrowers to start over again at the beginning of the loan modification process, even after they have spent several months, if not years, working toward a loan modification with the servicer who previously serviced their mortgage. Single points of contact aren't working. Lost document issues are also a huge problem among servicers other than the big five. Servicers are also failing to communicate effectively with borrowers; when a document submission is incomplete, servicers are not telling people exactly what about the submission is missing. Servicers are not complying with the timelines in HBOR. Many servicers are also cutting their loss mitigation staffs – it's very reminiscent of 2007 and 2008, when servicers did not have enough staff to address loss mitigation.

Ms. Zimmerman is also seeing more borrowers being denied for loan modifications in the improving housing market. As home values go up, the net present value (NPV) tests used by servicers to decide whether it makes more economic sense to modify a loan or to foreclose are favoring foreclosure over modifications. Many of the violations she sees are not easily filed as lawsuits under HBOR.

Pat Pinto, Staff Attorney, Legal Aid Society of Orange County

The Legal Aid Society of Orange County is a HUD-certified housing-counseling agency. Ms. Pinto is seeing all of the same problems that Ms. Zimmerman described. Problems with dual tracking and single points of contact (SPOCs) are common. SPOCs aren't answering their phones, are failing to call borrowers back, and are failing to respond to e-mails. Servicers frequently reassign SPOCs without notifying borrowers of the changes. Often the people who are being identified as SPOCs are unable to stop a sale or do anything to address a HBOR violation. Documents are regularly lost. Ms. Pinto complained that her office doesn't have anyone to call when they see an HBOR violation. Often the SPOCs are not located in California and are unfamiliar with California law. The best approach in many cases is elevating the borrower's problem to the California Monitor. But, not enough people know that the monitor exists. Ms. Pinto is not inclined to recommend that her clients sue a large servicer, in part because of the cost, and in part because of the significant amounts of paperwork required.

It is also hard to know when a loan modification application is complete. Servicers are not being clear with borrowers about what is actually needed to bring a loan modification application to "complete" status. Often, communication is vague about the nature of the problem, which results in borrowers re-submitting problematic documents, because they are not being told what about the documents is problematic or incomplete.

Ms. Pinto offered a few recommendations for consideration by the Committee. First, she believes that all servicers should have a rescission office or officer – a place to go to get a notice of default rescinded when dual tracking has occurred. She also believes

that SPOCs should be required to respond in a timely manner and that transfers of servicing rights should not require borrowers to start over at the beginning of the loan modification application process.

Elba Serrano, Senior Housing and Financial Counselor, East LA Community Corporation

Ms. Serrano has worked as a housing counselor for the past six years and has worked with about 1,000 people during that time. Prior to HBOR, she saw four issues – borrowers receiving the runaround, dual-tracking, lost paperwork, and lack of a dependable timeline. Post-HBOR, she is seeing many of the same issues, though some things have changed.

HBOR is working – just not all the time. Like prior witnesses, Ms. Serrano described problems with SPOCs and the lack of clarity from servicers about what constitutes a complete loan modification application. SPOCs are frequently changed. There are multiple language access issues involving SPOCs that do not speak the same language as the borrowers to whom they are assigned and written correspondence sent in a language that is not spoken by the borrower.

Complete loan modification packets vary from lender to lender and, even with the same lender, from person to person. Borrowers may not know when they have submitted a complete application. It can take three to six months to assemble a complete packet. However, once a complete packet is in, an answer is now provided fairly quickly.

Most homeowners aren't knowledgeable about their rights under HBOR. Many are confused about what their rights are under the national mortgage settlement and what their rights are under HBOR. Borrowers need someone sophisticated to help them (this was also a problem discussed by Professor Porter toward the end of her remarks). Document submission portals and escalation contacts are available to her as a housing counselor. Unfortunately, many borrowers don't know to go to counselors. They run into problems trying to interact directly with their servicers and don't know where to turn.

A copy of Ms. Serrano's testimony is included in Appendix A.

Joseph Manning, Jr., Attorney at Law, Manning Law, APC

Mr. Manning is a consumer attorney who has filed approximately fifty lawsuits under HBOR. He sees HBOR as a huge improvement for borrowers. Post-HBOR, homeowners who fight to keep their homes are much more likely to prevail.

Virtually all of his clients have tried and failed to resolve their issues with their servicers before coming to him. Before filing suit, he typically tries to settle cases with servicers.

Borrowers don't have a clear understanding of what dual tracking is. They think it is one thing, and the statute says it is something else. Homeowners may believe that they're

not in danger of being foreclosed on, because they have submitted an application. However, if that application is not complete, the foreclosure can proceed.

About 80% to 90% of the cases he files are pre-foreclosure. After foreclosure, people give up and typically won't seek an attorney. He has, however, had some success in getting servicers to rescind trustee sales, when he is able to communicate with a servicer about the existence of a problem before the trustee's deed of sale is recorded (the typical ten-day to two-week lag between the trustee sale and the trustee's deed being recorded can give him time in which to act and give servicers time in which to rescind the sale).

It is unusual for anything to happen quickly when he deals with large financial institutions. Borrowers typically come to him with many of the same problems that were described by Ms. Zimmerman, Ms. Pinto, and Ms. Serrano. Transfers of servicing rights are problematic. Moving forward in the foreclosure process before a complete loan modification application is submitted is another problem he sees frequently. If a servicer perceives a loan modification application as not being complete, it's not complete, and the servicer is legally allowed to continue moving forward with the foreclosure.

Mr. Manning typically does not take his cases on a contingency basis. He either charges an hourly rate or a flat fee – whichever the client prefers. Most of his clients have some means.

Mr. Manning has not gotten courts to award him attorneys' fees at the temporary restraining order stage. Banks will commonly try to settle rather than going to court; they'll typically offer money to a homeowner if they are in the wrong.

Types of cases he has taken on sometimes involve a homeowner's right to be re-evaluated for a loan modification if their economic situation changes in a material way. Some borrowers see their incomes increase. Others see the values of their homes increase.

Vince Howard, Howard Law, on behalf of the Consumer Attorneys of California

Mr. Howard does not believe that servicers have done everything they can to comply with HBOR. His firm still experiences a steady stream of calls from borrowers who have been dual-tracked. Three of the biggest problems he sees are dual tracking, improper denials, and denials that are inappropriately vague. What seems like a simple process that should be easy for the homeowner to understand is not at all transparent. Unless there is an enforcement mechanism available to borrowers, servicers will not willingly follow the rules.

Mr. Howard is also concerned about the reluctance of some courts to award attorneys' fees to plaintiffs' attorneys who obtain temporary restraining orders. If a temporary restraining order is granted, and a servicer rescinds the notice of default that gave rise

to the lawsuit, the case never proceeds to the preliminary injunction stage, and attorneys' fees and costs may not be awarded.

A copy of Mr. Howard's testimony is included in Appendix A.

Panel Four: How Are Bonafide Purchasers Fairing: A BFP Perspective

This panel was not held, due to the unexpected absence of Jacob Ouzts, an attorney with considerable experience representing bonafide purchasers who have been the subject of HBOR lawsuits. The other witness scheduled to participate during this panel, Ms. Kim Stone, spoke during the subsequent industry panel.

Panel Five: How Are Lenders and Servicers Fairing: An Industry Perspective

Peter Munoz, Partner, Reed Smith LLP

Mr. Munoz began by trying to dispel a perception that he feared had been created by the testimony which preceded his. He feared that earlier witnesses had created a perception that banks want to foreclose. That's not true. Banks would prefer performing loans.

Mr. Munoz also observed that nonjudicial foreclosure is a tradeoff; banks get a relatively quick foreclosure without the involvement of attorneys, and borrowers have their negative equity wiped out. HBOR and other legislation that has been enacted in California has created so many delays in the nonjudicial process that some banks are looking to use judicial foreclosures.

Mr. Munoz spent most of his testimony describing some of the unintended, problematic consequences of HBOR.

Many banks are seeing assertions from borrowers that their economic circumstances have changed, but are not being given documentation from borrowers to support those changed circumstances. SB 900 and AB 278 fail to describe what information the borrower is required to provide. Banks are conservative institutions that don't want to be sued. This has caused some banks to hold off on moving forward with foreclosures in these cases.

Mr. Munoz and his clients are also seeing some courts awarding attorneys' fees when the court approves a preliminary injunction. This is very new. The actual facts of the case haven't been litigated. The question of whether the servicer committed a material violation of the law has not been answered. But, some courts are awarding attorneys' fees at this early stage.

There's also a new issue that has arisen, which he has learned about from discussions with title companies. Some plaintiffs who don't even want an injunction file a lawsuit on the eve of the foreclosure, and record a lis pendens with the county recorder's office.

With a lis pendens recorded, no one can be a bona fide purchaser, because there is a record notice of a dispute over title to the property. Title companies are saying that they will not issue a title policy on these properties, as long as the dispute is outstanding. This requires banks to litigate the validity of the title to the property and has the same effect as an injunction delaying the sale.

Another issue Mr. Munoz is seeing relates to the broad application of HBOR to all types of defaults. HBOR was meant to benefit people who are struggling to pay their mortgages, but the statute applies to other types of defaults, including failure to provide property upkeep and failure to pay property taxes. All of the procedures of HBOR must be followed by banks, even when the default does not relate to failure to make mortgage payments.

Other issues: Under HBOR, if an entity is not the holder of the beneficial interest in the property, that entity cannot bring the foreclosure. There is a difference between the holder of the beneficial interest, the beneficiary, and the payee on the loan. MERS is often the holder of the beneficial interest. The statute technically prevents the beneficiary from bringing the foreclosure. Instead, it gives that power to MERS. This is counter to what was intended. The statute intended for the lender who is the beneficiary to be making the decision.

Finally, the broad definition of mortgage servicer has led to litigation against individuals who were not intended to be included in the definition of that term. The way the statute is written, "mortgage servicer" can be interpreted as including the bank that made the loan, the attorney representing the bank (because the attorney is dealing with the borrower), and the bank's loan officer (also because the loan officer is dealing with the borrower). All three entities could be jointly and severally liable for HBOR violations. Some unscrupulous attorneys have sued attorneys and loan officers working for banks, citing HBOR violations.

Joe Sanders, Managing Director, Servicing Division, First Mortgage Corporation

First Mortgage Corporation is a mid-size mortgage bank licensed under the California Residential Mortgage Lending Act, which services just under \$5 billion in Federal Housing Administration (FHA), Veterans Administration (VA), and government-sponsored entity (GSE) loans. First Mortgage exclusively services FHA, VA, and GSE loans. It does not originate portfolio loans, nor does it subservice. The company has completed approximately 175 loan modifications since enactment of HBOR, but none of those were a product of the requirements of HBOR; instead, they reflect the requirements of FHA, VA, and the GSEs.

First Mortgage increased the size of its loss mitigation staff by 20%, solely to comply with HBOR. The bills have lengthened the nonjudicial foreclosure process, and, in doing so, have increased the costs that First Mortgage incurs, when it advances payments to the investors who hold the loans the company services. Although First Mortgage is ultimately reimbursed for those payments, it is reimbursed at a lower rate of

interest than the interest it must pay out to the investors, resulting in a loss of revenue to the company.

Since enactment of HBOR, First Mortgage has been threatened with several lawsuits and been sued twice, citing HBOR violations. One of those lawsuits was dismissed. The other is still pending. Together, the lawsuits have cost his company thousands of dollars to defend. Mr. Sanders criticized the bills as inviting predatory attorneys who threaten lawsuits, even when it is clear that no violations have occurred. Some attorneys are providing fraudulent documentation to borrowers and encouraging borrowers to file suit to stall the nonjudicial foreclosure process.

The bills are also encouraging other stall tactics by borrowers. In lieu of filing suit or filing for bankruptcy, some borrowers are sending in loan modification applications very late in the foreclosure process as a tool to stall the sales of their homes. When it receives a loan modification application, First Mortgage must stop everything to evaluate it, to be sure of complying with HBOR. As another stall tactic, First Mortgage is seeing instances in which borrowers are asserting changes in their circumstances, when none have occurred. The statute is ambiguous as to what is meant by a "material" change in circumstances, which makes compliance that much more difficult for First Mortgage.

Mr. Sanders painted a very different picture of the loan modification application process than the picture painted by the panelists on the consumer panel. He characterized the loan modification application process as very simple for borrowers to understand, and very clear with respect to what constitutes a complete loan modification application. After questioning from Senator Calderon about why the consumer panel witnesses could be seeing such different things, Mr. Sanders speculated that some of the differences between what he described and what the consumer panel witnesses described may be due to the fact that First Mortgage must follow very clear guidelines issued by FHA, VA, and the GSEs, while other servicers may be using different, potentially more complicated rules when evaluating applications to modify their portfolio loans.

A copy of Mr. Sanders' testimony is included in Appendix A.

Darren Williams, CEO, Wescom Credit Union

Wescom serves approximately 200,000 customers in Southern California. The credit union is headquartered in Pasadena. Speaking on behalf of both his credit union and the credit union industry, Mr. Williams expressed appreciation for the provisions of SB 900 and AB 278 that distinguished between smaller institutions like credit unions and big banks. There is a fundamental difference between the for-profit industry and the not-for profit (credit union) industry. Credit unions never experienced mortgage losses in excess of one half of one percent, so should not have been subject to the same rules applied by HBOR to the large, for-profit financial institutions.

Despite the provisions of HBOR which exempted institutions with 175 or fewer foreclosures per year from the most prescriptive of the bills' provisions, Wescom Credit Union's compliance costs have increased to comply with HBOR. The credit union has had to hire a compliance specialist and has spent more money on attorneys. Wescom has not changed its borrower outreach, but it has changed the way in which it documents that outreach. It has also had to change certain aspects of its web site to comply with HBOR.

Post-HBOR, it is taking Wescom more time to foreclose than it did pre-HBOR. If a borrower requests a modification, the timelines in HBOR can increase the length of time to foreclose. Wescom also waits at least 30 days following a loan modification denial before moving forward with a foreclosure. As was noted by earlier witnesses, Mr. Williams observed that the statutes are unclear about how many times a borrower may re-apply for a loan modification.

To date, Wescom has not received any complaints from its borrowers, citing HBOR violations, nor has it been sued. However, Mr. Williams did observe that the increased regulatory burden that is being placed on credit unions, and the associated cost of that burden, is increasing consolidation within the industry.

Kim Stone, President, Civil Justice Association of California

The Civil Justice Association of California (CJAC) advocates preventing California law from encouraging unjustified lawsuits. California is ranked at the bottom of states across the country in measures of litigation risk, and we grant our borrowers greater rights through the nonjudicial foreclosure process than other states. History has shown us that private rights of action with the ability to obtain attorneys' fees and costs can cause huge problems (e.g., the Americans with Disabilities Act and Proposition 65 lawsuits). In the case of HBOR, it's too early to tell if similar litigation problems will develop, but CJAC is worried about the possibility.

CJAC believes that fights should be kept out of the courts if at all possible, and that courts should be funded appropriately, so they can adequately handle disputes that do reach them. An injunction that serves only to delay an inevitable foreclosure is not a good use of the judicial process and is not deserving of attorneys' fees. We shouldn't create a system where lawyers are being paid for delaying the process and failing to achieve actual benefit to homeowners.

A copy of Ms. Stone's testimony is included in Appendix A.

David Haithcock, Executive Director, California Independent Bankers

In the early 2000s, there was a lot of risky mortgage activity. Community banks are very conservative institutions and didn't compete in that space. Then the mortgage implosion came, and community banks could have filled the void, because residential mortgage lending is a good fit for the California Independent Bankers' membership and

its desire to serve the communities in which they operate. However, community banks chose not to enter the residential mortgage lending market, because of the existence of a tremendous amount of legislation, both state and federal. Part of the reason they stayed on the sidelines was the cost of compliance, and part was fear of being found in violation of the new rules. Community banks are not getting into the residential mortgage lending business, in large part because the regulatory environment and the litigation environment make it too costly and too risky to do so.

Chairman Correa picked up on the lack of significant participation in the residential mortgage lending arena by community banks and asked if there is currently a credit crunch for borrowers wishing to obtain residential mortgages. Mr. Haithcock responded that no, there is not a credit crunch. Even though the community banks aren't doing a lot of residential mortgage lending, larger institutions are. Now is currently a great time to be a borrower, because of the historically low interest rates and the competition among lenders for good borrowers.

Mr. Haithcock concluded by commending the Legislature for recognizing community banks as a subset of the banking industry in SB 900 and AB 278, by establishing the 175 foreclosures per year threshold in the legislation.

Mike Belote, on behalf of the California Mortgage Association and United Trustees Association

The California Mortgage Association (CMA) serves a public who cannot obtain credit through traditional channels. Almost every member of CMA is below the 175 foreclosures per year limit. Many are also out of the residential mortgage lending business, due to a combination of AB 489 (Migden) from 2001, SB 1137 (Perata et al.) from 2008, HBOR, and national mortgage standards. Mr. Belote urged the Committee to be mindful of the cumulative effect of any new rules it might consider, given the multiple layers of existing rules. It may be a good time to be a good borrower (following on Mr. Haithcock's comments), but it is not a good time to be a marginal borrower.

CMA members have not yet been sued under HBOR, but are receiving demand letters for money on loans not covered by the law. These letters require an attorney to respond. CMA members' costs are increasing, due to a combination of compliance, training, and attorneys.

On behalf of the United Trustees Association (UTA), Mr. Belote observed the presence of technical ambiguities in the law that ought to be cleaned up. As one example, he cited the requirement that property be owner-occupied for the borrower to be eligible for certain rights under HBOR and asked, "Does the owner-occupancy requirement apply to the property's status at the time the loan was made, or at the time the notice of default is filed?" That ambiguity will either need to be clarified by the Legislature, which UTA prefers, or by the courts.

Closing Remarks – Chairman Correa

Senator Correa closed the hearing by thanking the witnesses and attendees for their participation. He indicated a receptivity to consider suggestions for cleanup language, and expressed the hope that, despite the challenges shared by earlier witnesses, borrowers and servicers could reach negotiated solutions on loan workouts.

APPENDIX A

WRITTEN TESTIMONY SUBMITTED BY WITNESSES



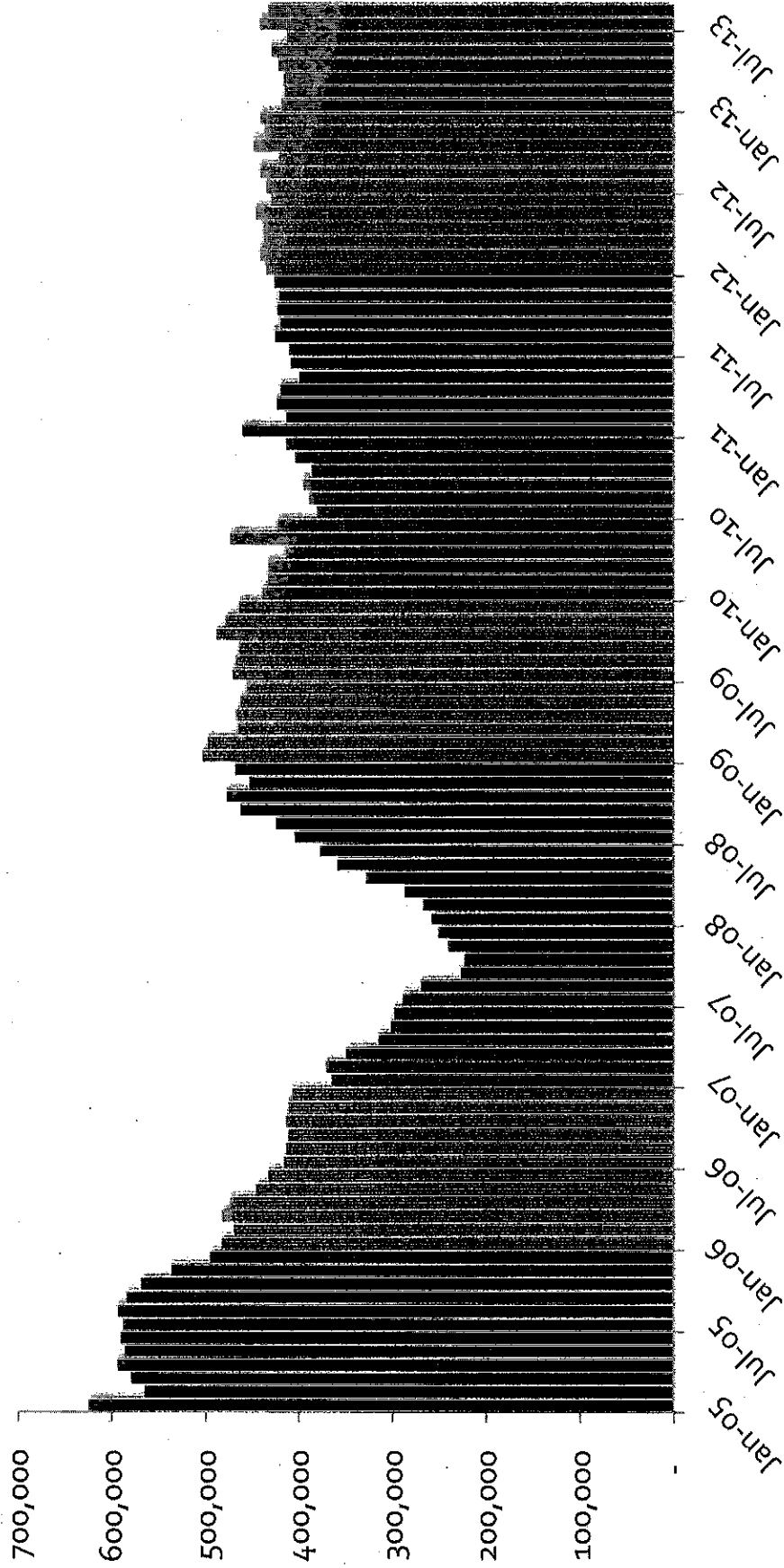
**ECONOMIC AND HOUSING IMPACTS OF
SB 900 AND AB 278**

October 1, 2013

Selma Hepp, Ph.D., C.A.R. Senior Economist

Sales of Existing Detached Homes

• California, August 2013 Sales: 434,700 Units, -3.2% YTD, -1.9% YTY



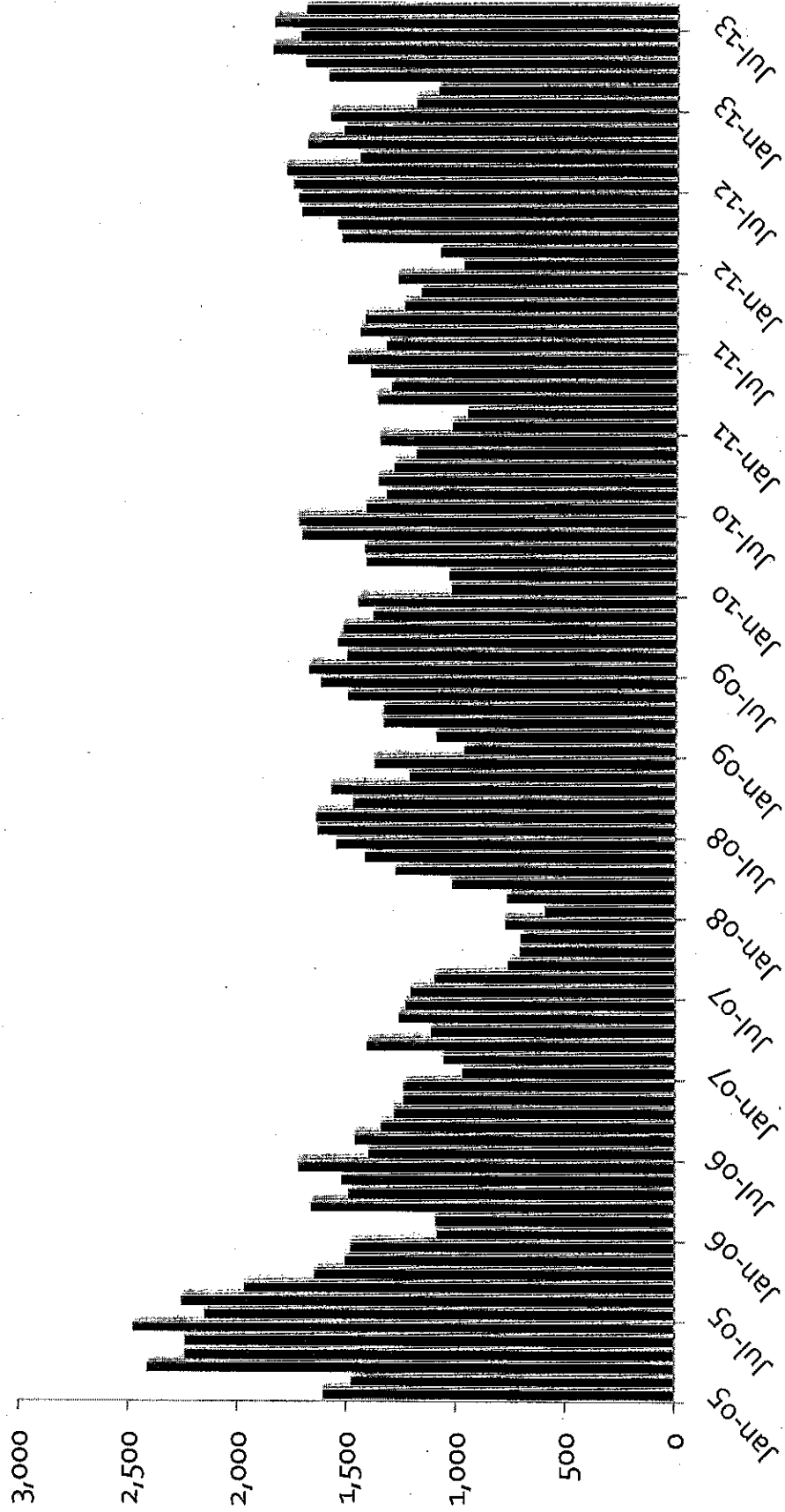
SERIES: Sales of Existing Single Family Homes
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®

*Sales are seasonally adjusted and annualized



Sales of Existing Detached Homes

• Orange County, August 2013: 1,706 Units, +4.7% YTD, -5.0% YTY

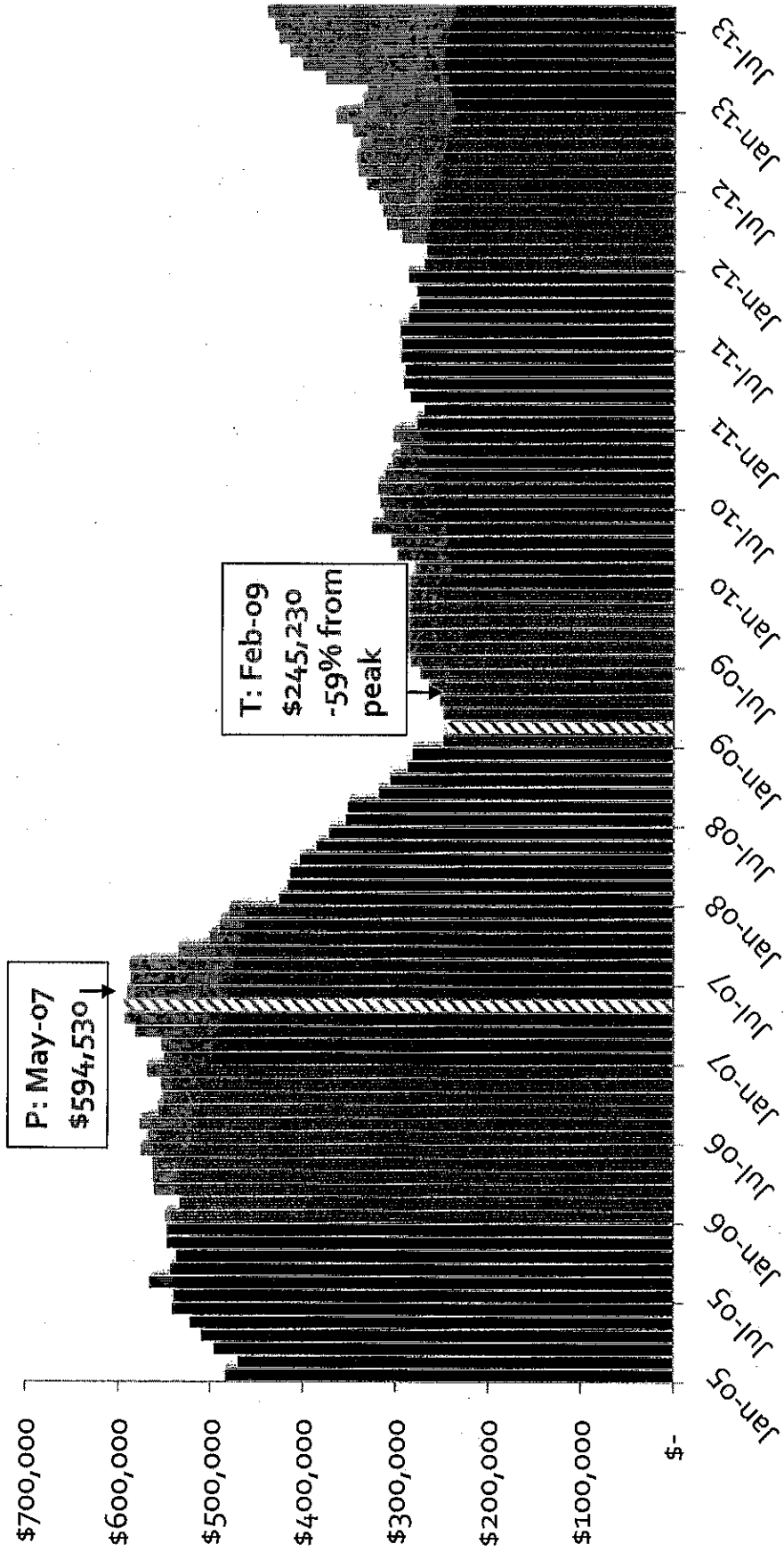


SERIES: Sales of Existing Single Family Homes
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Median Price of Existing Detached Homes

• California, August 2013: \$441,330, Up 28.4% YTY

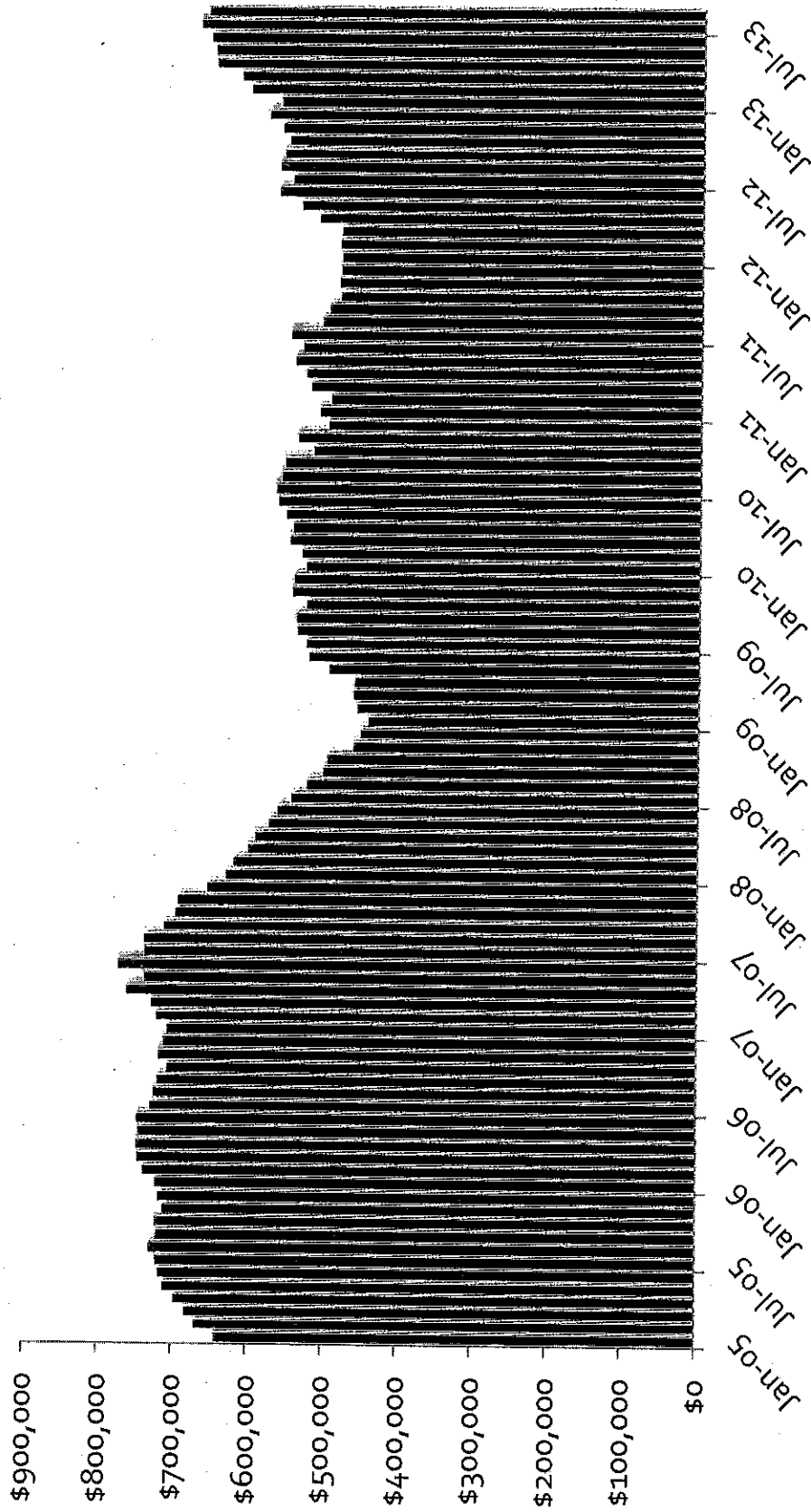


SERIES: Median Price of Existing Single Family Homes
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Median Price of Existing Detached Homes

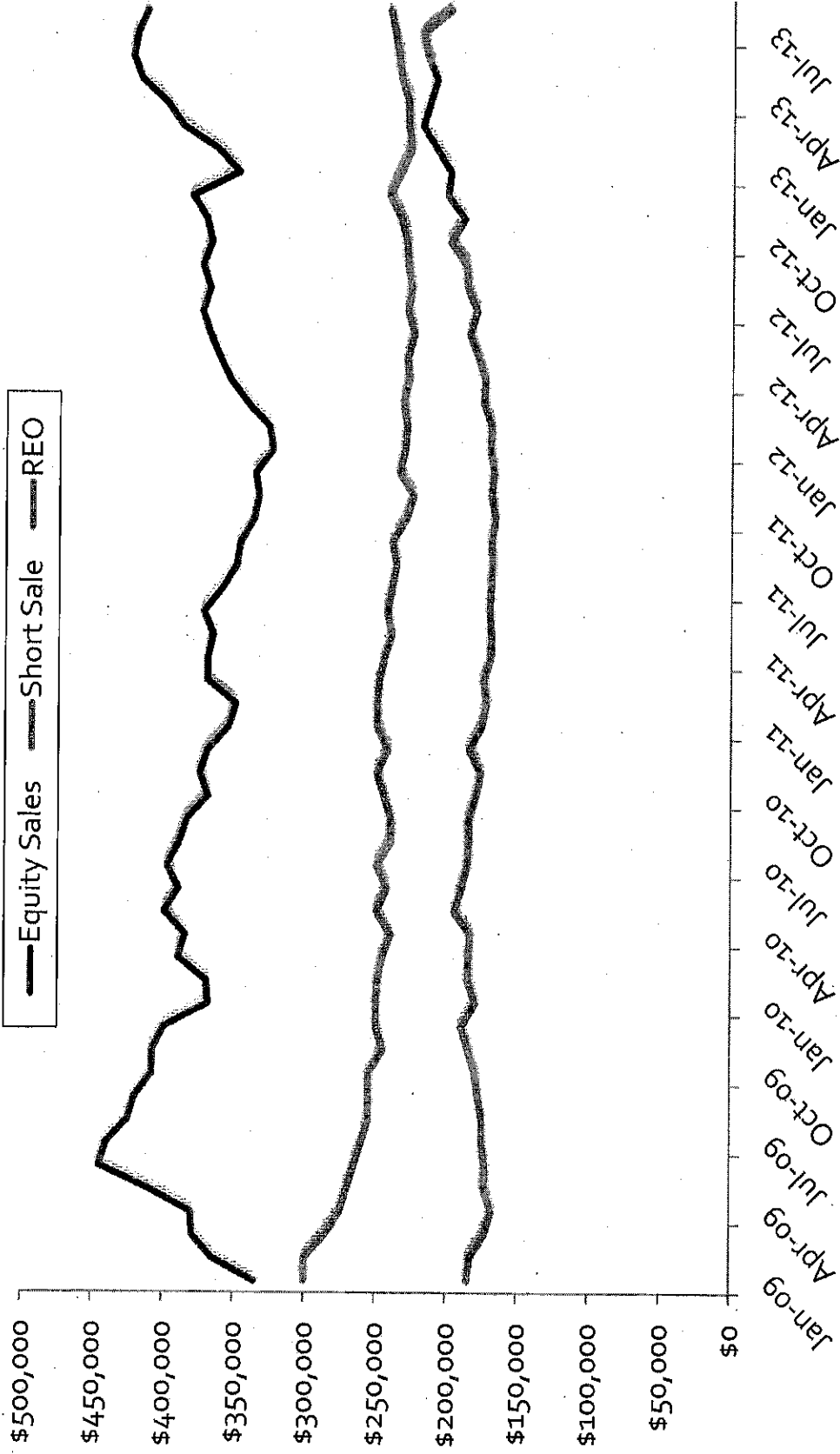
• Orange County, August 2013: \$664,580, Up 17.1% YTY



SERIES: Median Price of Existing Single Family Homes
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



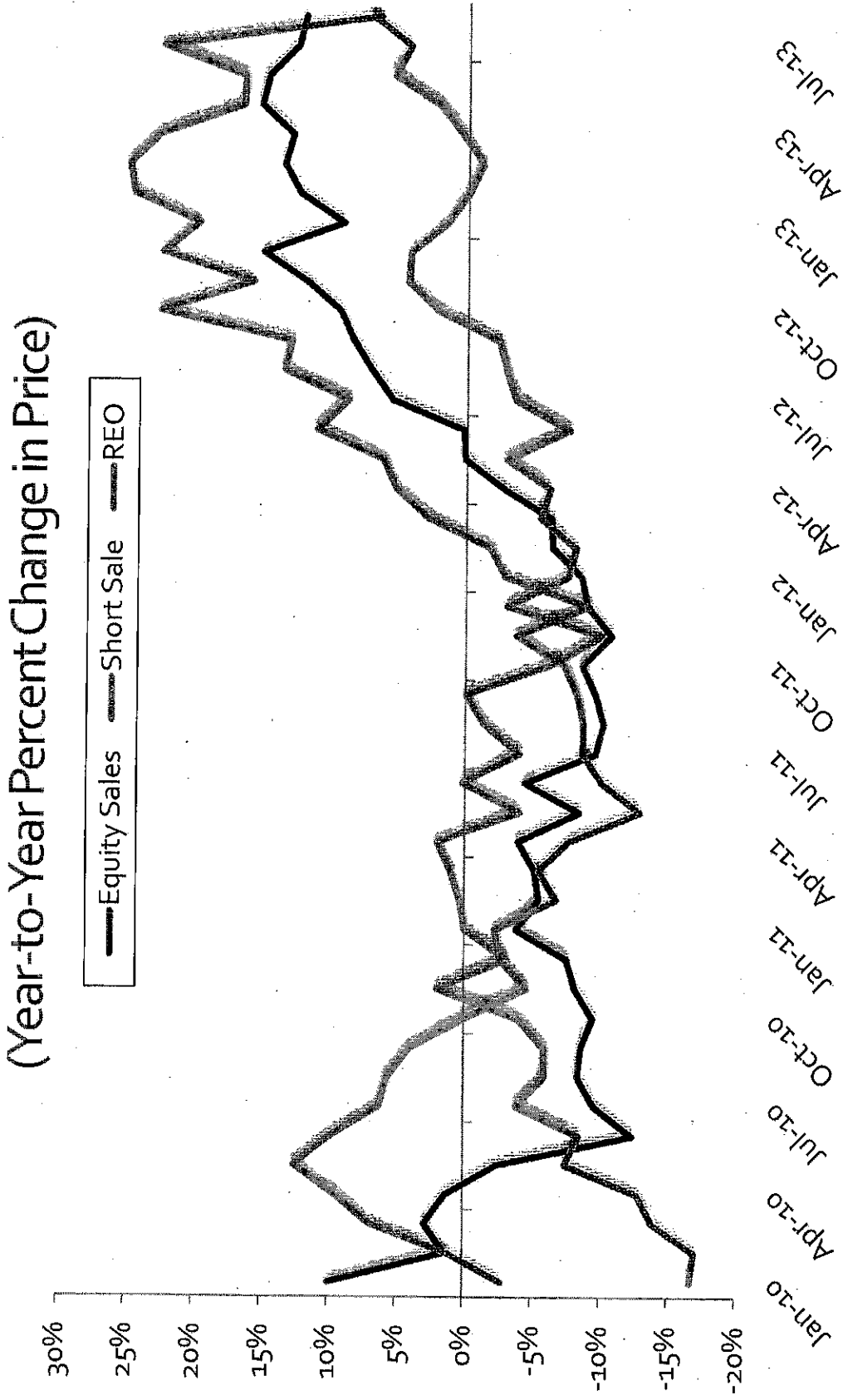
Median Price for Equity Sales Back to Late 2009 Level



SERIES: Distressed Median Price
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



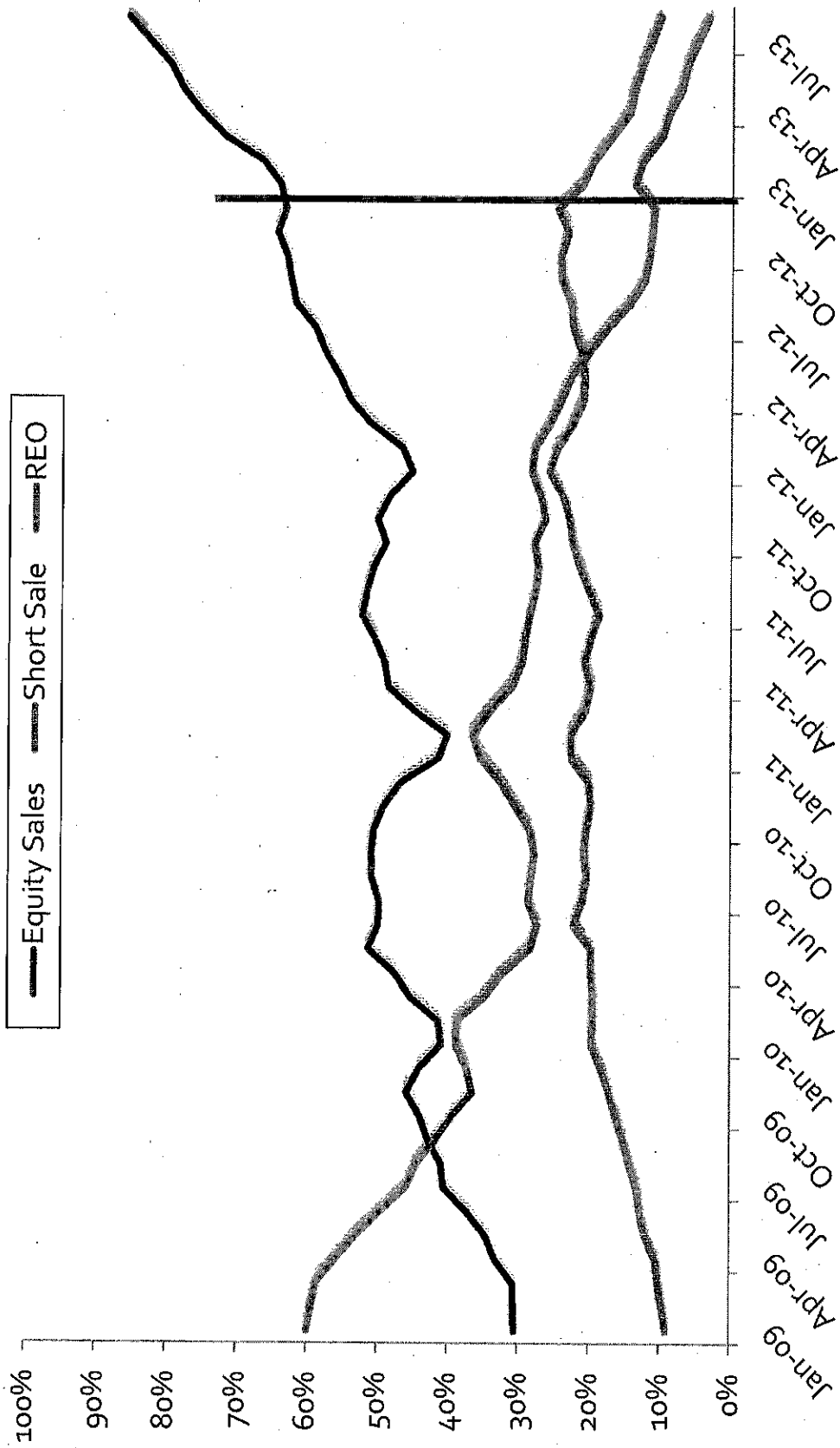
Median Prices for Equity Sales, REO Sales, and Short Sales All Improved from 2012 (Year-to-Year Percent Change in Price)



SERIES: Distressed Median Price
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Share of Equity Sales Has Increased Sharply Since Early 2012

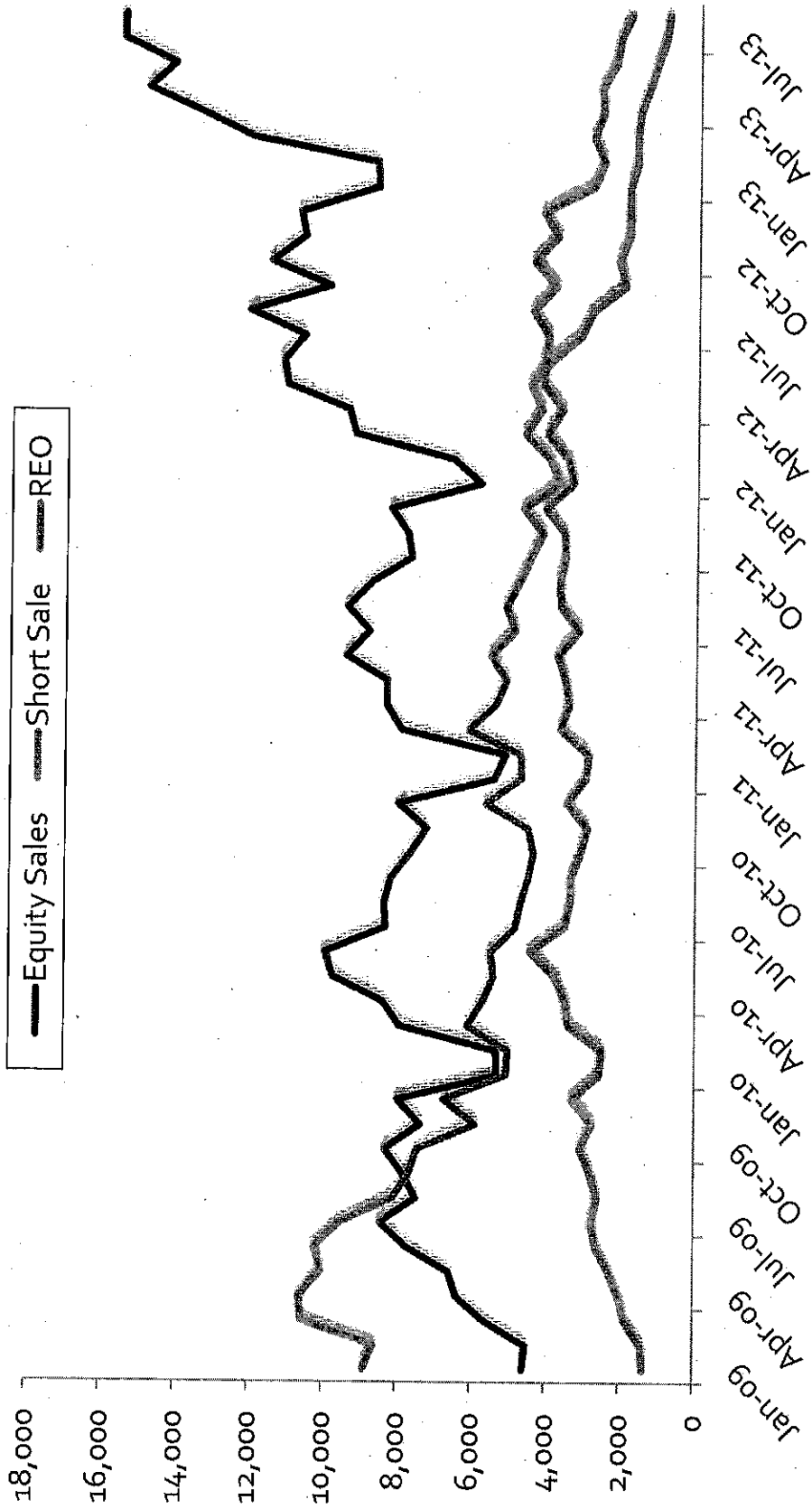


SERIES: Distressed Sales
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Equity Sales at the Highest Level in Years

- Raw# of Equity Sales, REO, & Short-Sales

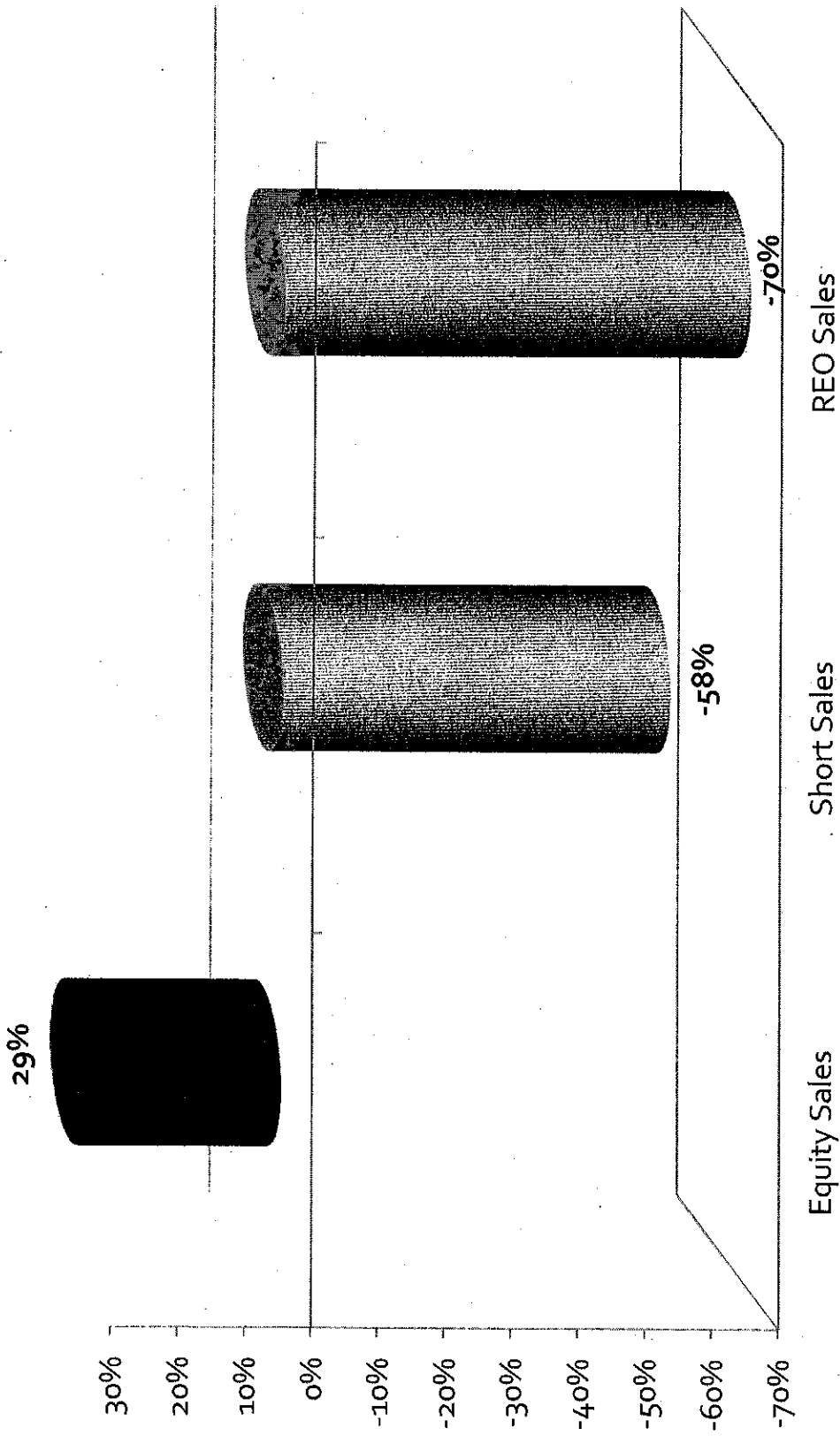


SERIES: Distressed Sales
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Equity Sales Continued to Improve, But Short Sales and REO Sales Dropped

- (% Change in Sales – Year to Year)

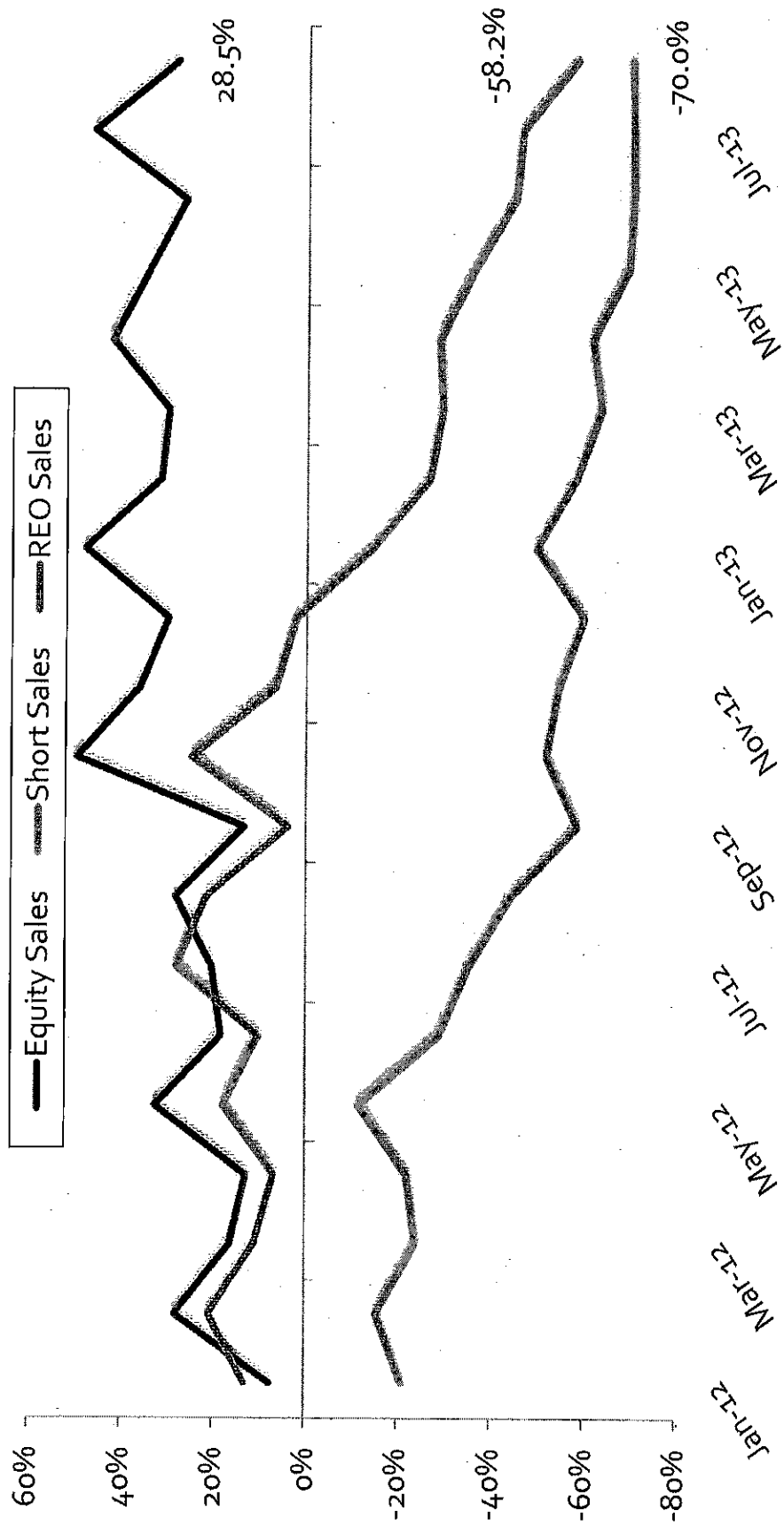


SERIES: Distressed Sales
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Equity Sales Have Been Increasing by Double-Digits Since Early 2012

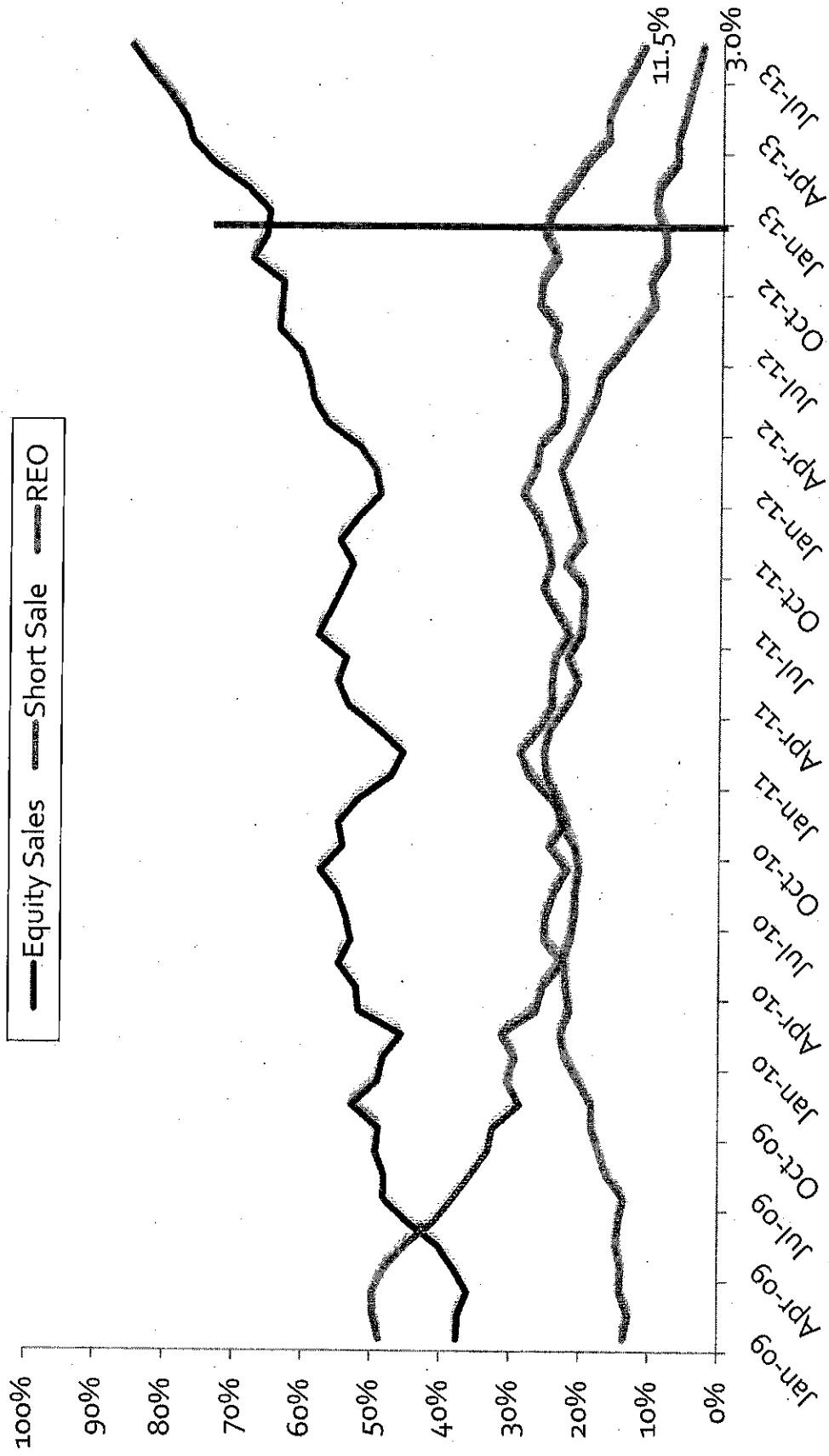
- (Year-to-Year)



SERIES: Distressed Sales
 SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



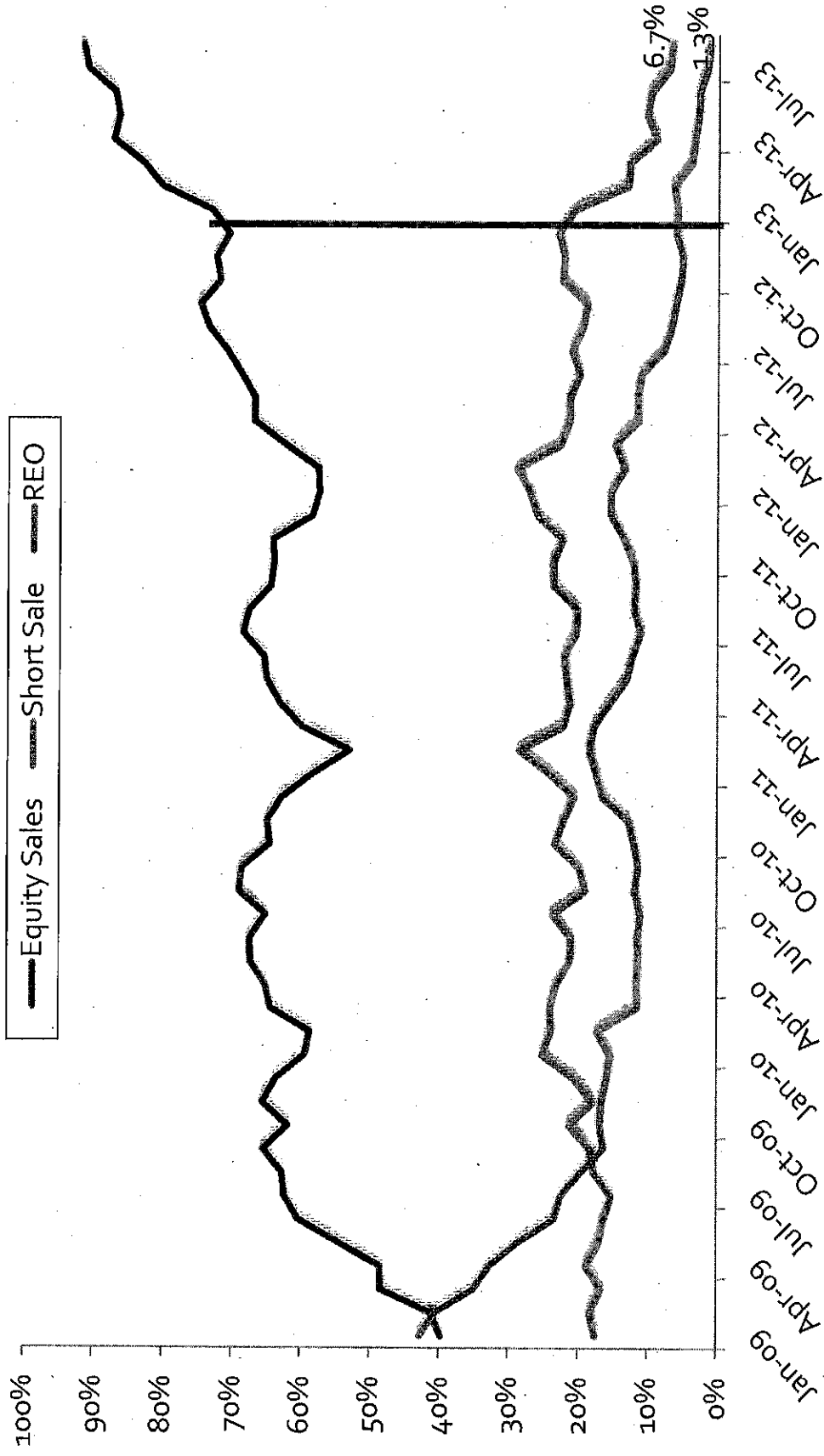
Los Angeles County



SERIES: Distressed Sales
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



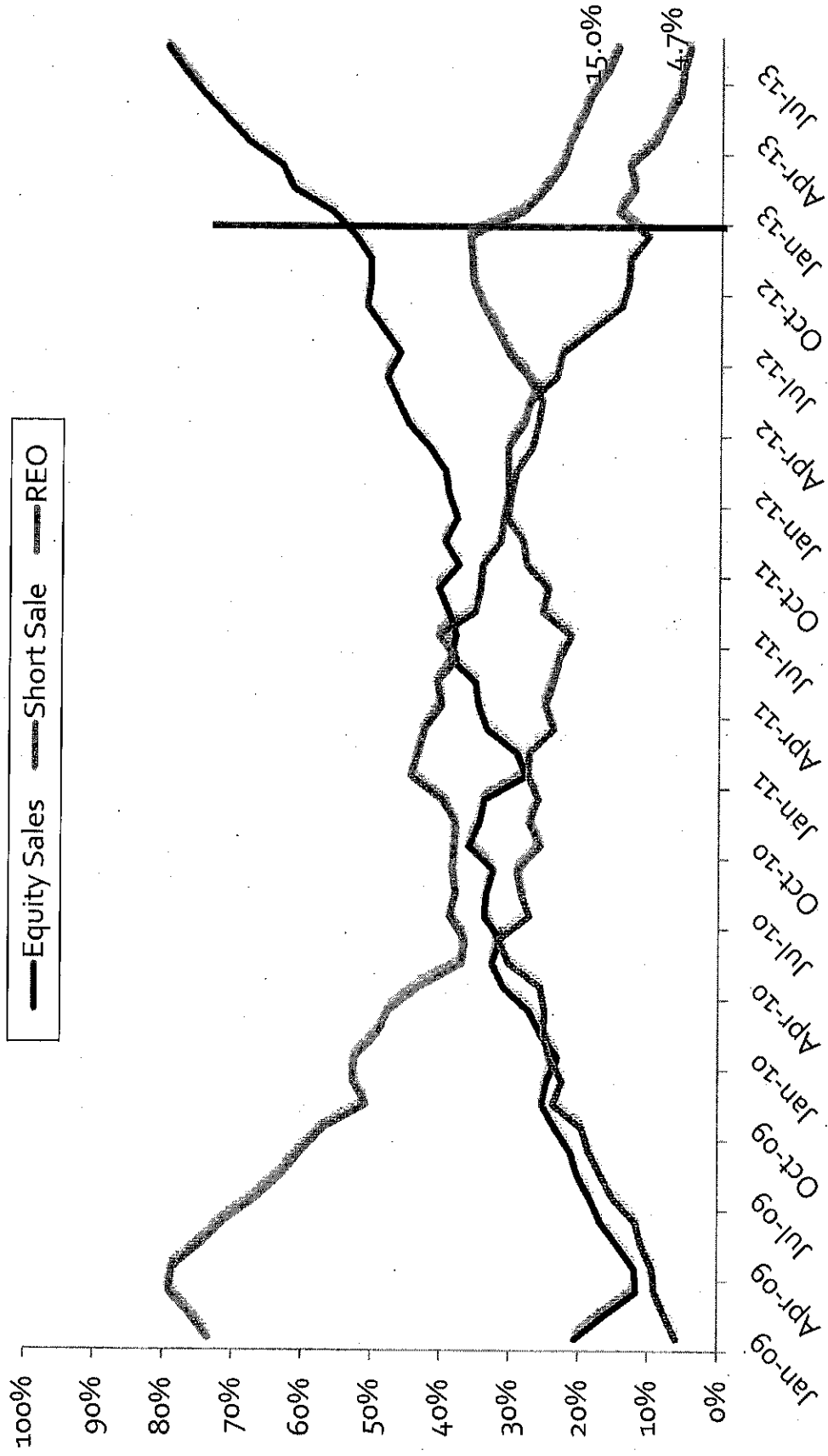
Orange County



SERIES: Distressed Sales
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



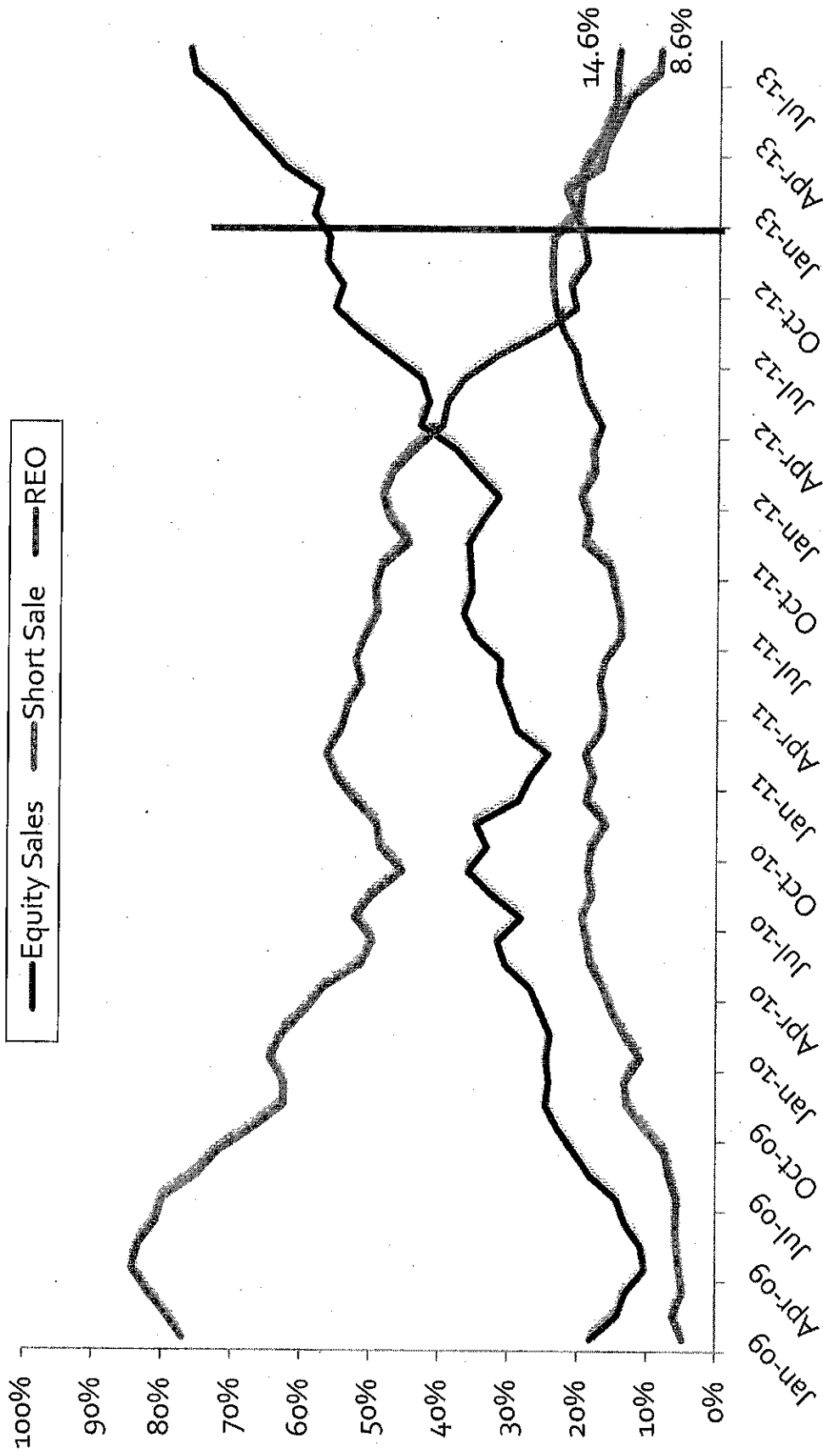
Riverside County



SERIES: Distressed Sales
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



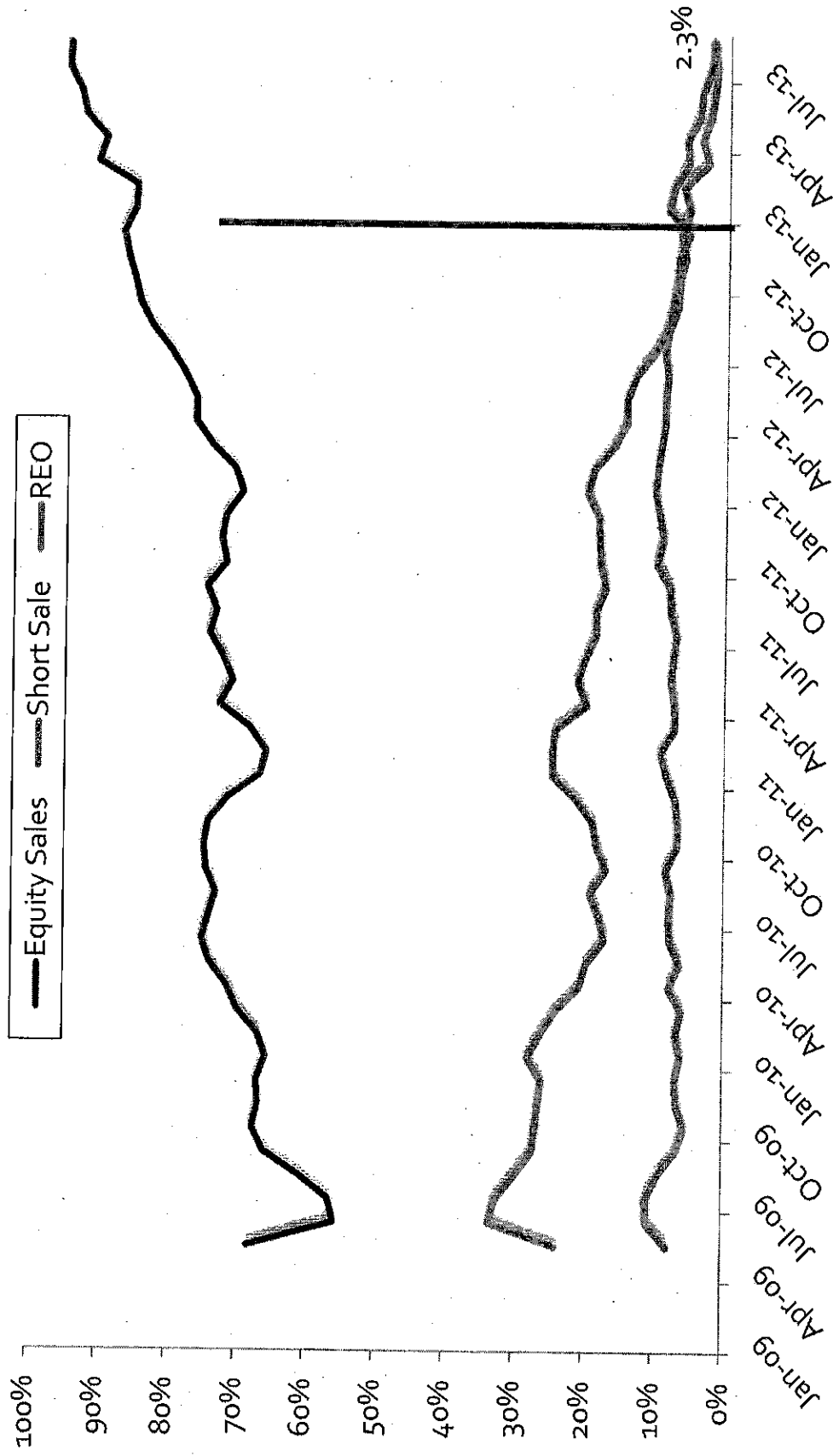
San Bernardino County



SERIES: Distressed Sales
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



San Diego County

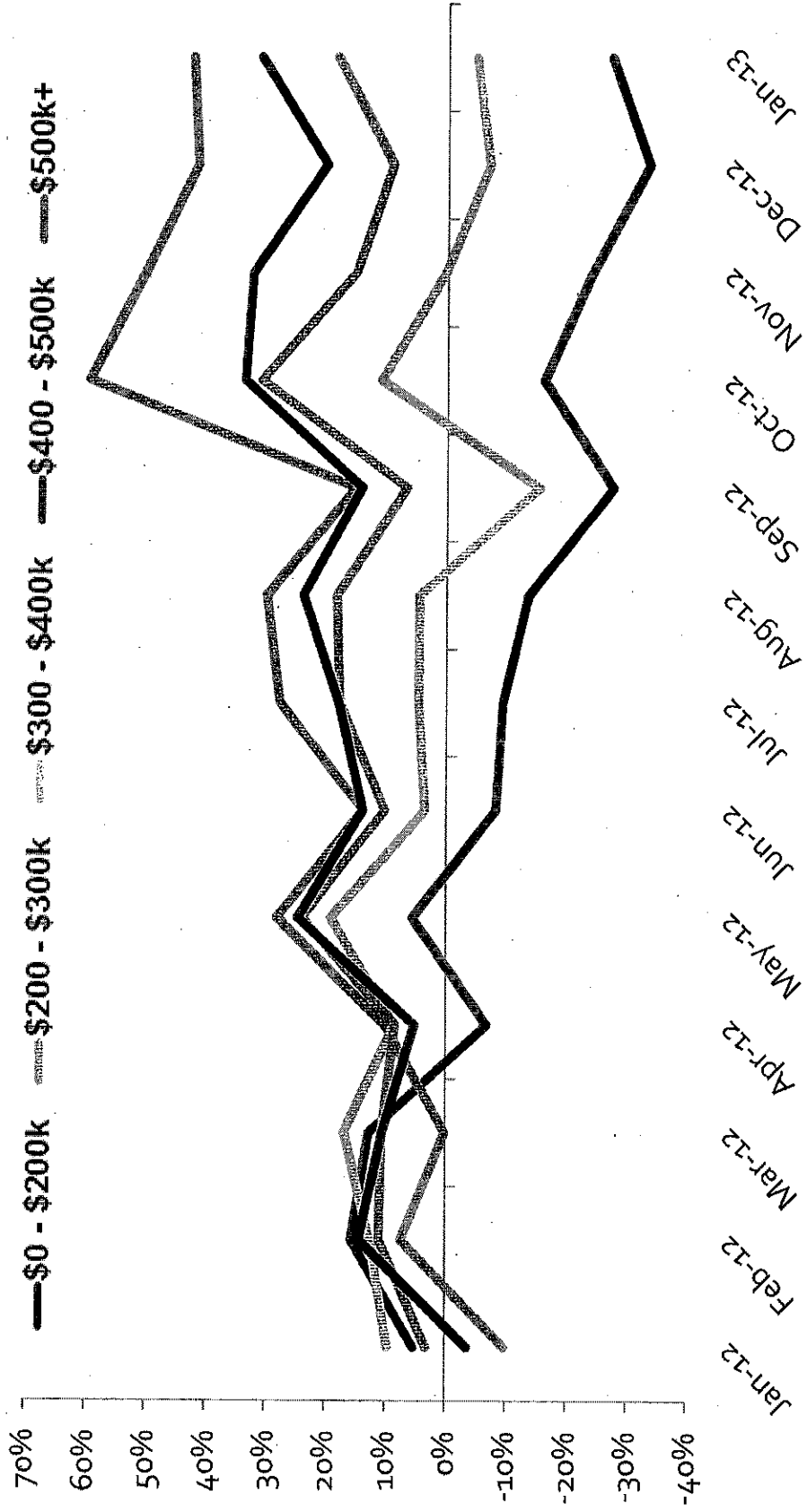


SERIES: Distressed Sales
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Change in Sales by Price Range

• (Year-to-Year)

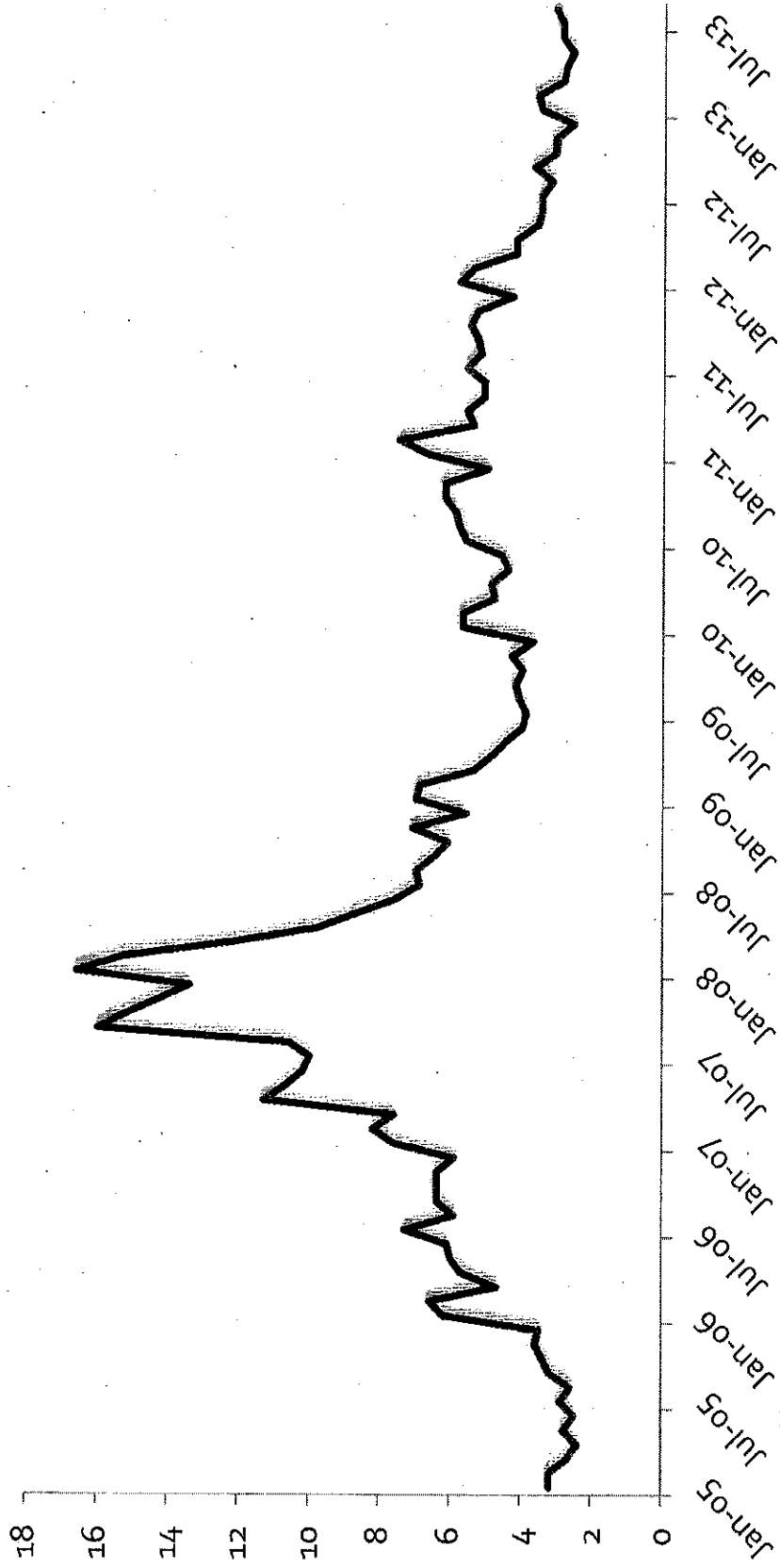


SERIES: Sales of Existing Detached Homes
 SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Unsold Inventory Index

• California, August 2013: 3.1 Months



Note: "Unsold Inventory Index" represents the number of months it would take to sell the remaining inventory for the month in question. The remaining inventory for the month is defined as the number of properties that were "Active", "Pending", and "Contingent" (when available) and divide the sum by the number of "Sold" properties for the month in question.

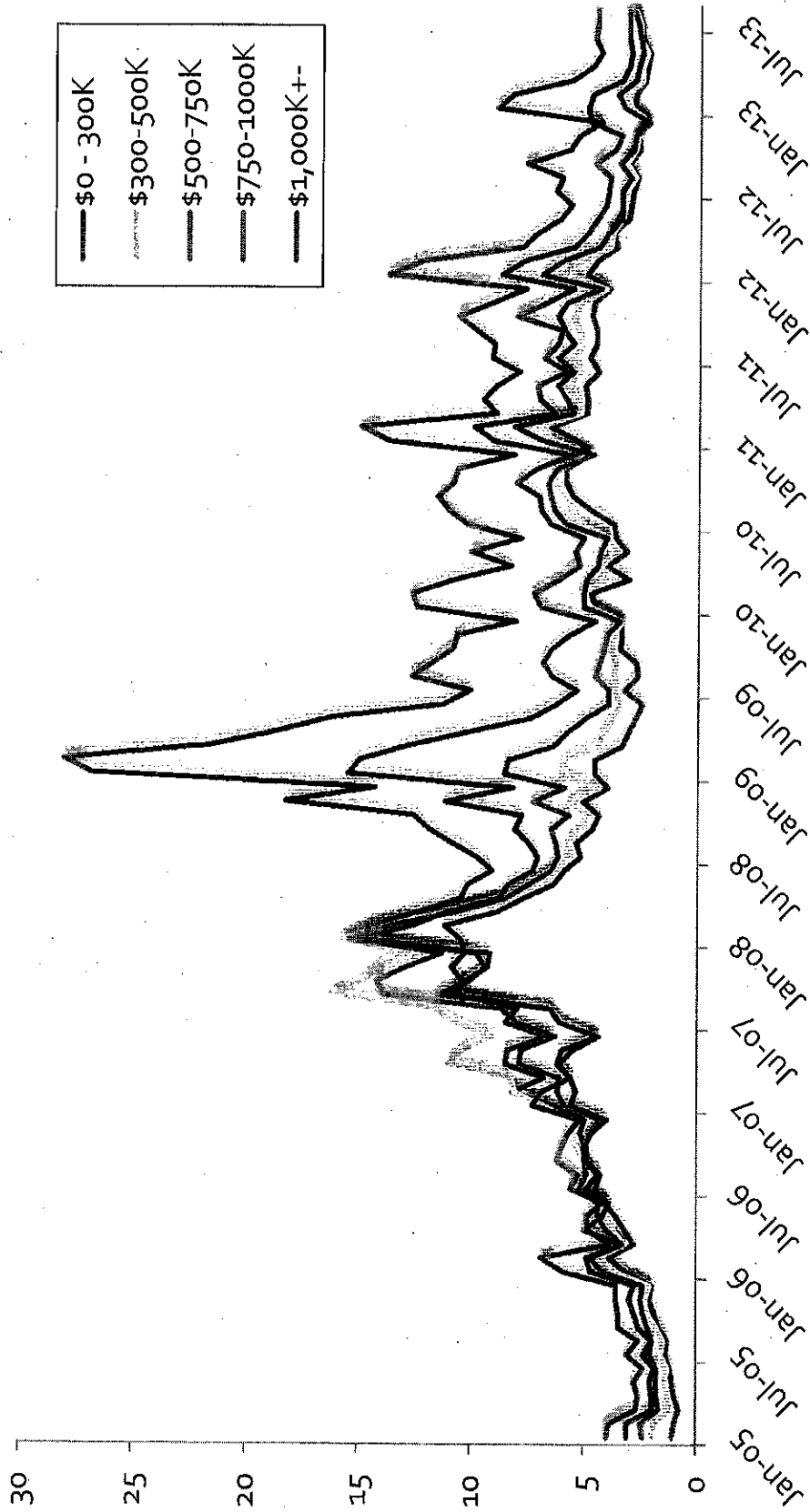
SERIES: Unsold Inventory Index of Existing Single Family Homes

SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Unsold Inventory By Price Range

• California, August 2013

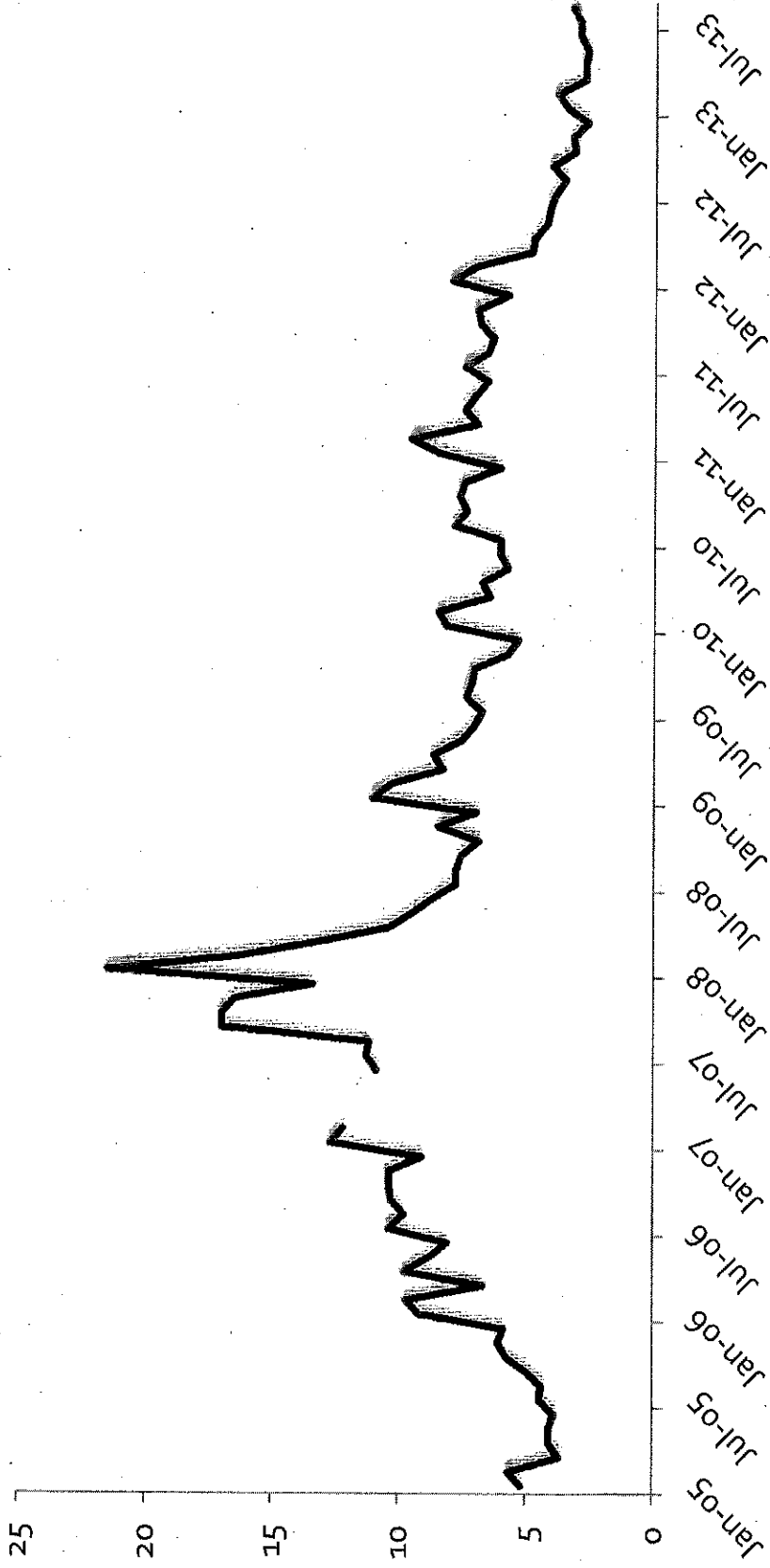


SERIES: Unsold Inventory Index of Existing Single Family Homes
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Unsold Inventory Index

• Orange County, August 2013: 3.3 Months



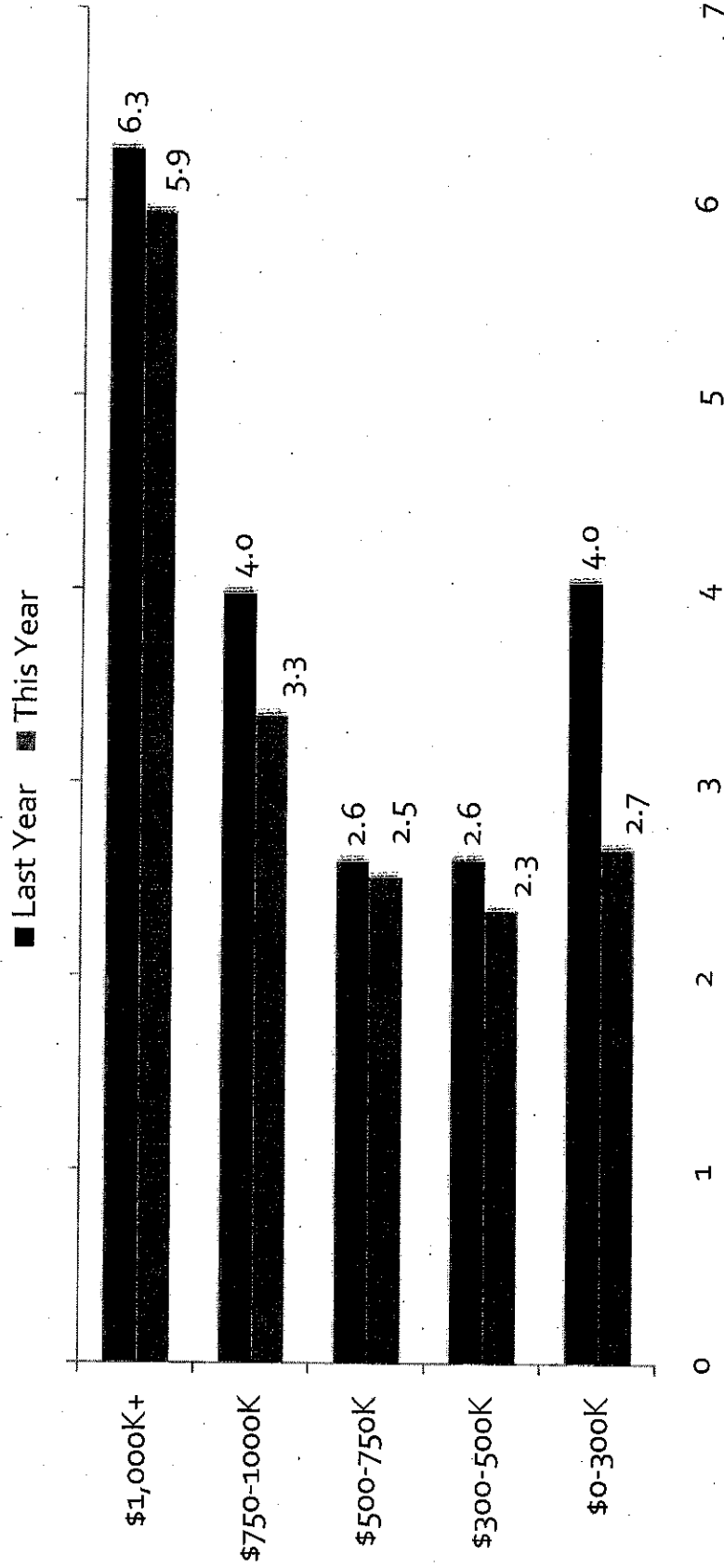
Note: The Unsold Inventory Index represents the number of months it would take to deplete the remaining inventory at the end of a particular month with the sales rate of the month in consideration. Inventory includes listings with "Active", "Pending", and "Contingent" (when available) statuses.

SERIES: Unsold Inventory Index of Existing Single Family Homes
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Unsold Inventory By Price Range

• Orange County, August 2012 vs. August 2013



Note: The Unsold Inventory Index represents the number of months it would take to deplete the remaining inventory at the end of a particular month with the sales rate of the month in consideration. Inventory includes listings with "Active", "Pending", and "Contingent" (when available) statuses.

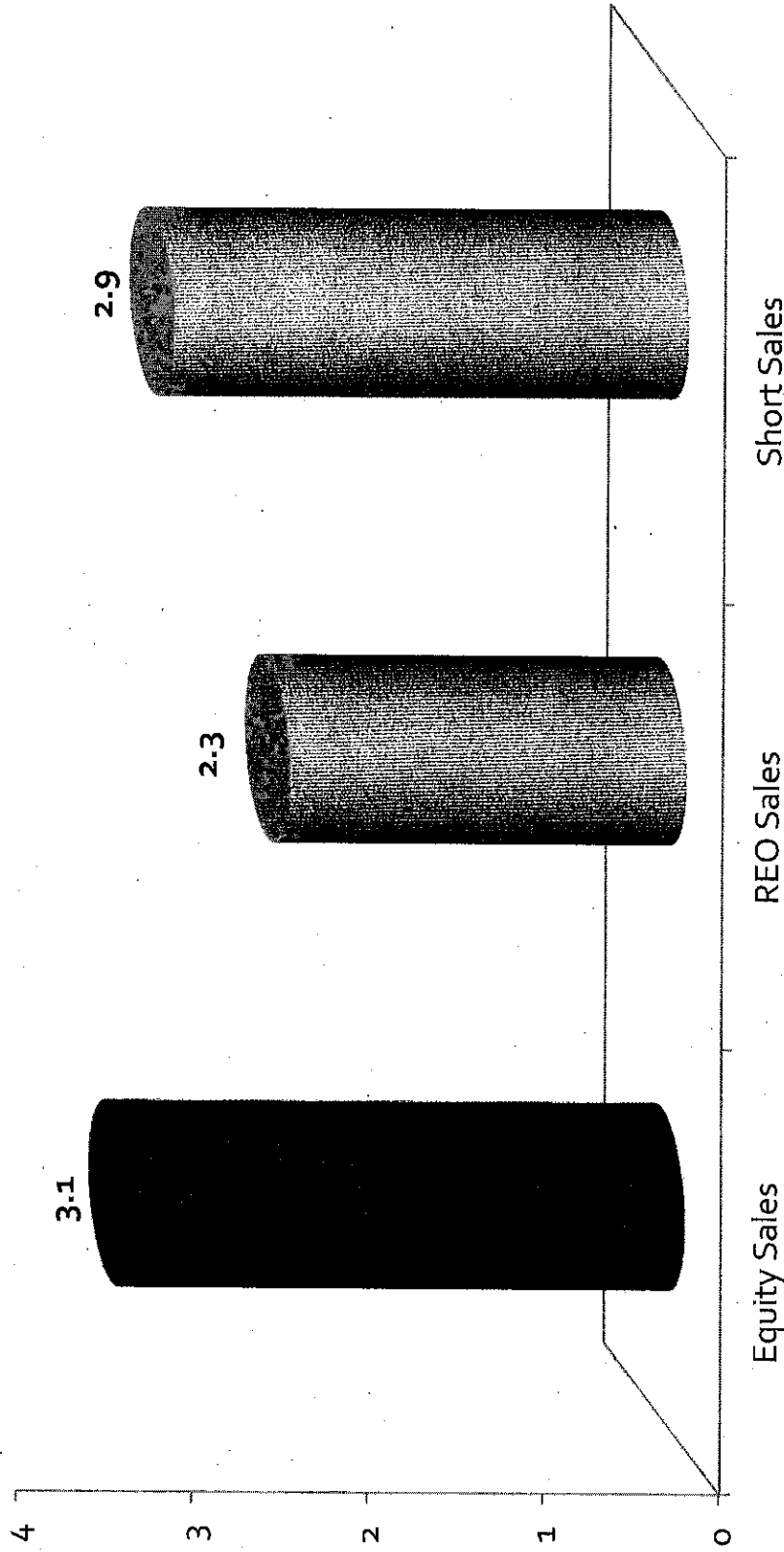
SERIES: Unsold Inventory Index of Existing Single Family Homes
 SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Tight Supply of Inventory, Especially for REO Sales

- California: August 2013

UNSOLD INVENTORY INDEX (MONTHS)

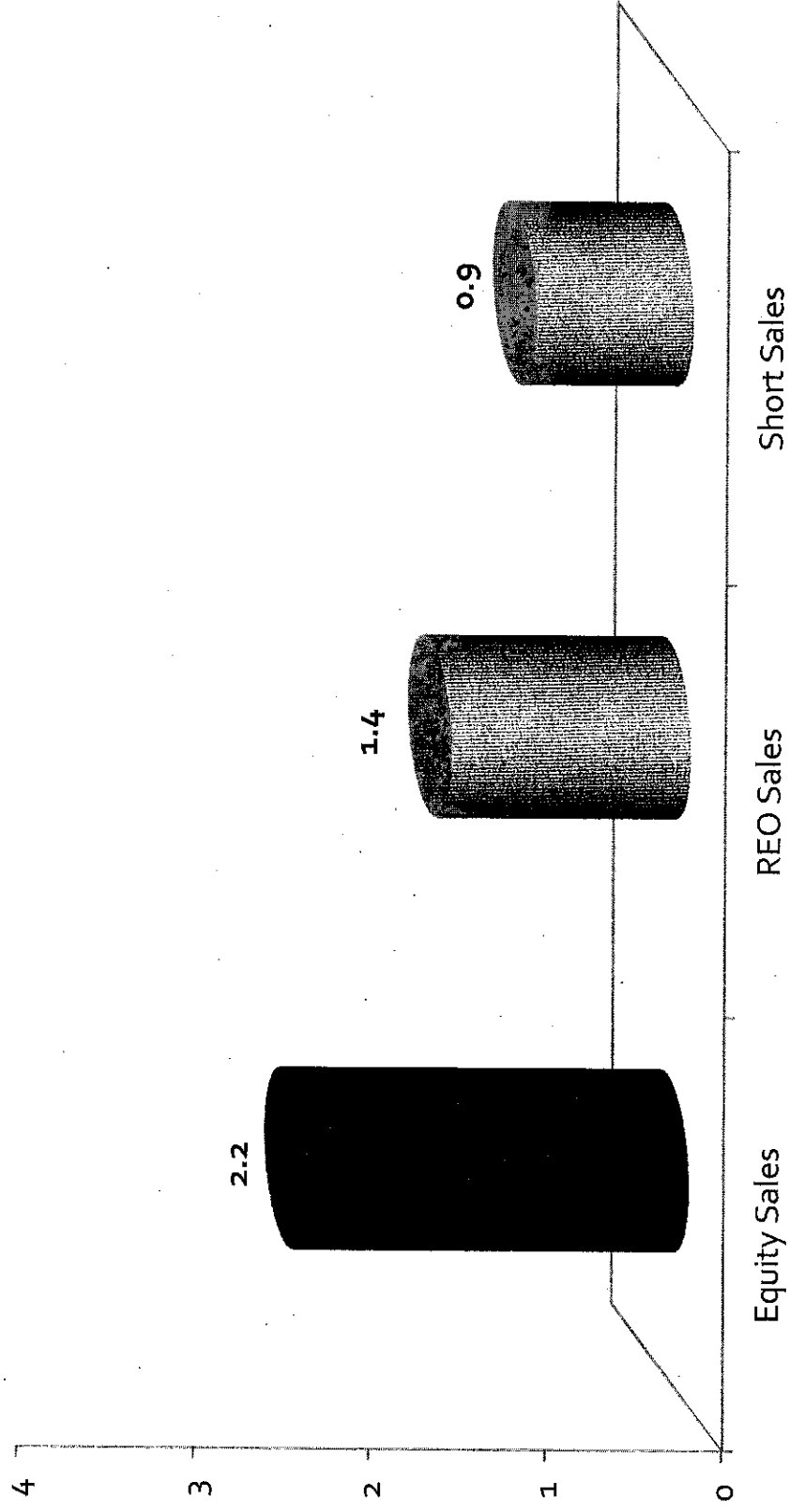


SERIES: Distressed Unsold Inventory Index
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Extremely Low Levels of Active Listings at the State Level

UNSOLD INVENTORY INDEX (MONTHS)

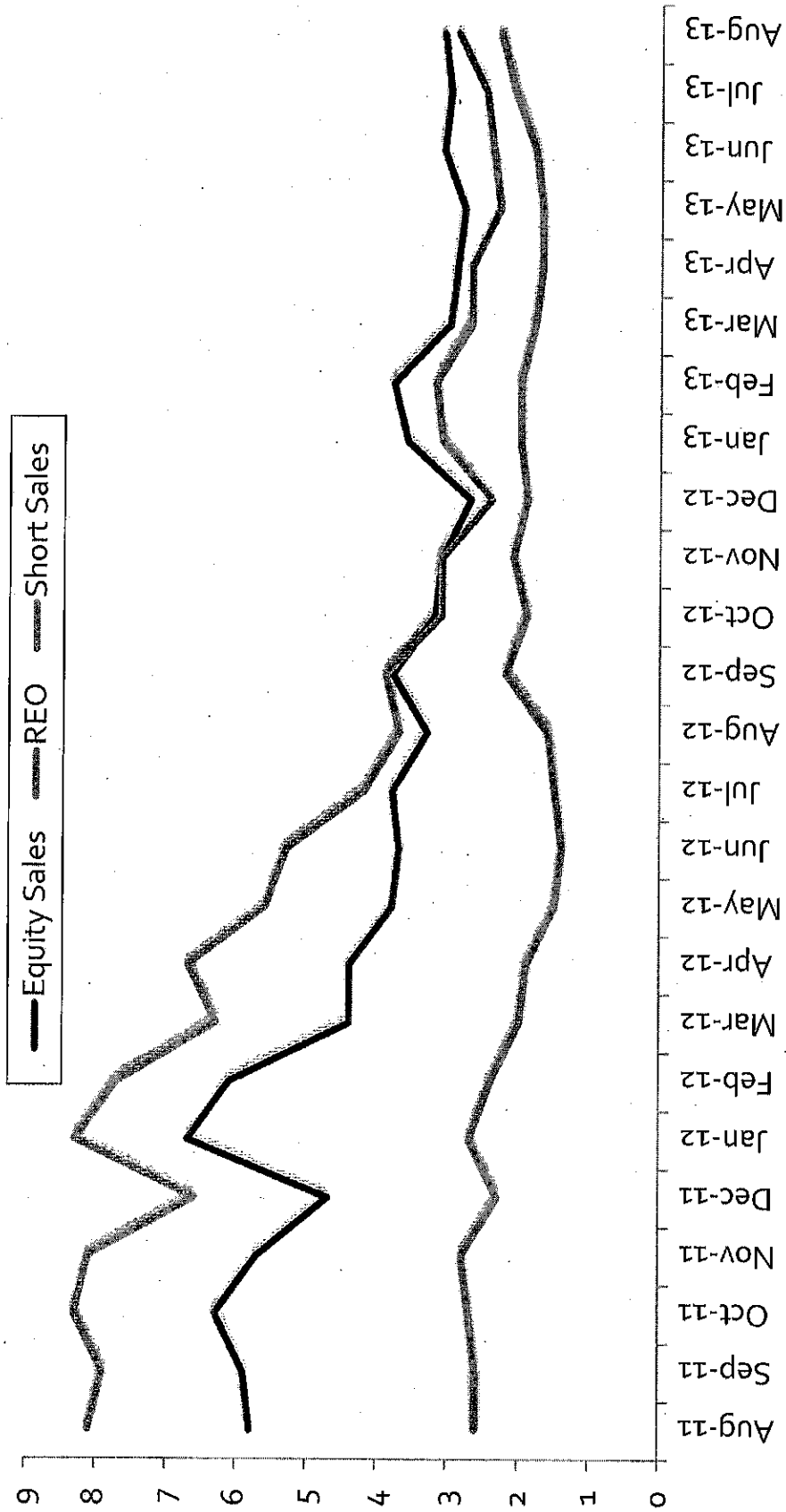


SERIES: Distressed Unsold Inventory Index
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



For the 3rd Month in a Row, the Supply of Distressed Sales Improved Slightly

UNSOLD INVENTORY INDEX (MONTHS)



SERIES: Distressed Months Supply of Inventory
 SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Why is Inventory so Low?

1. Demand Side

1. Housing affordability is at historic highs
2. Low rates impacting other investment alternatives

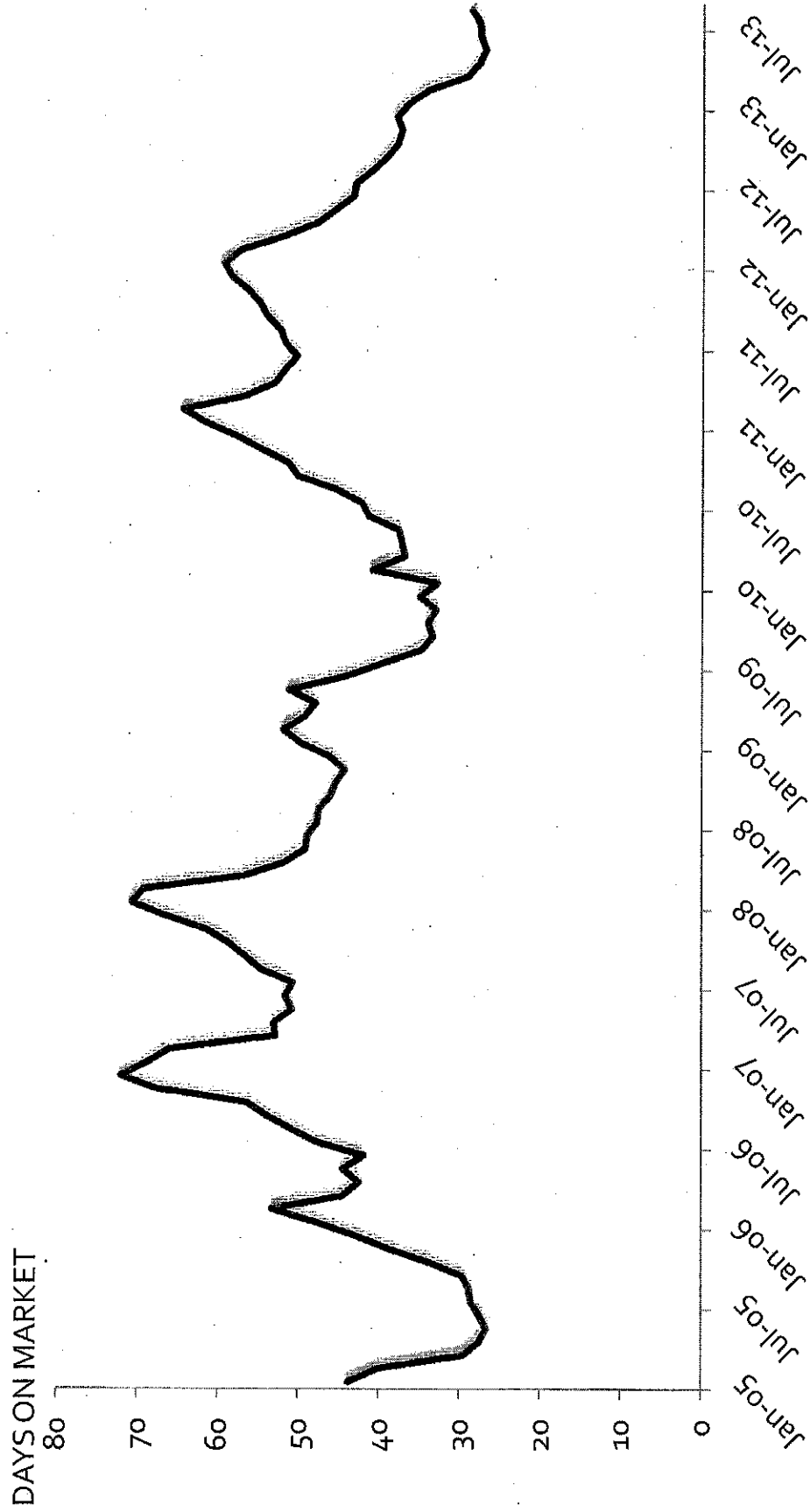
2. Supply Side

1. Little new construction for last 5 years
2. Underwater homeowners are stuck
3. Foreclosure pipeline drying up in non-judicial states
4. Investors are renting instead of flipping
5. Off-market (aka "pocket") listings growing



Median Time on the Market

- California, August 2013: 28.8 Days

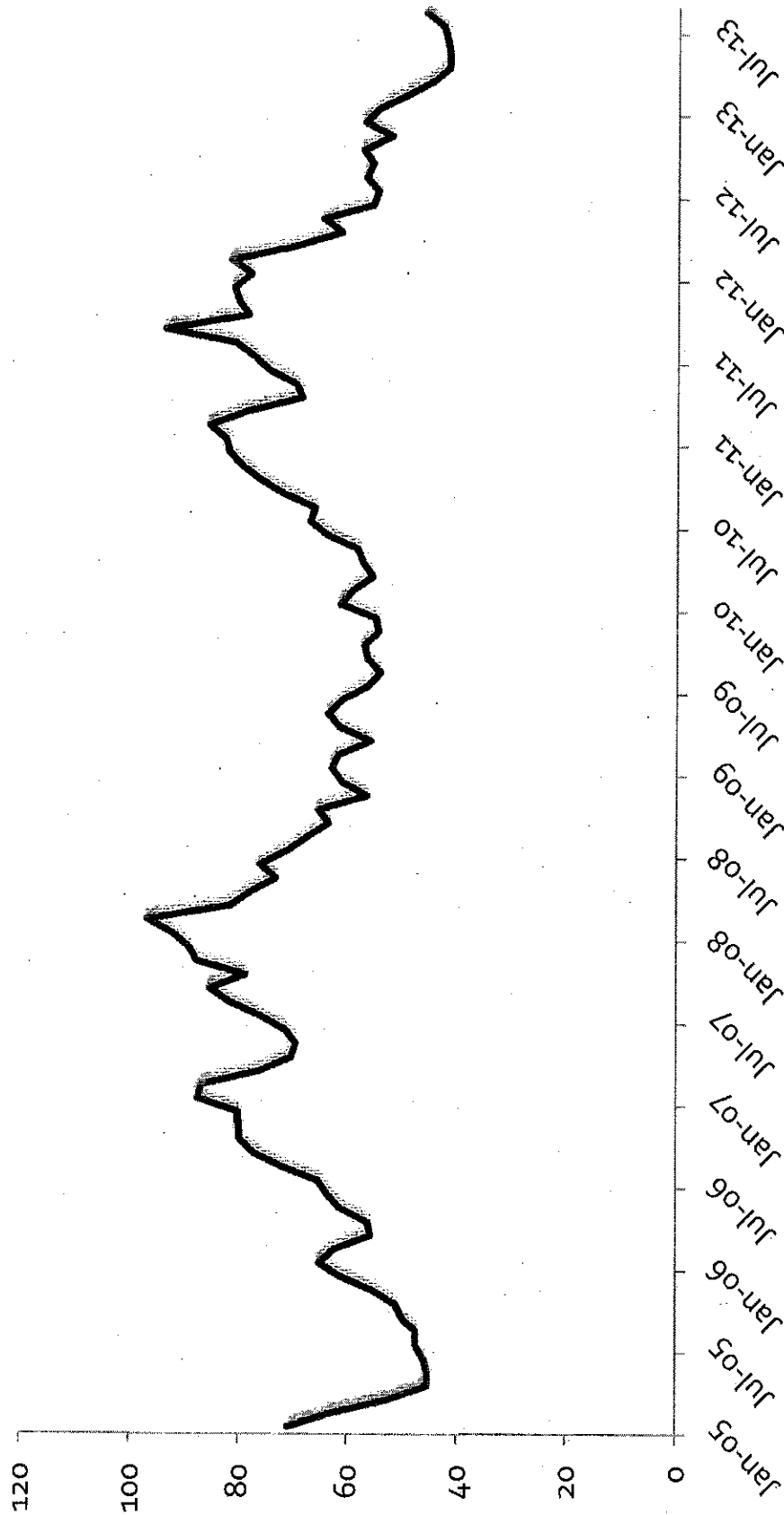


SERIES: Median Time of Market of Existing Single Family Homes
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®



Median Time on the Market

- Orange County, August 2013: 46.3 Days



SERIES: Median Time of Market of Existing Single Family Homes
SOURCE: CALIFORNIA ASSOCIATION OF REALTORS®





THANK YOU



Homeowner Bill of Rights Implementation Update Impact on Foreclosure Activity

Senate Committee on Banking and Financial Institutions

October 1, 2013

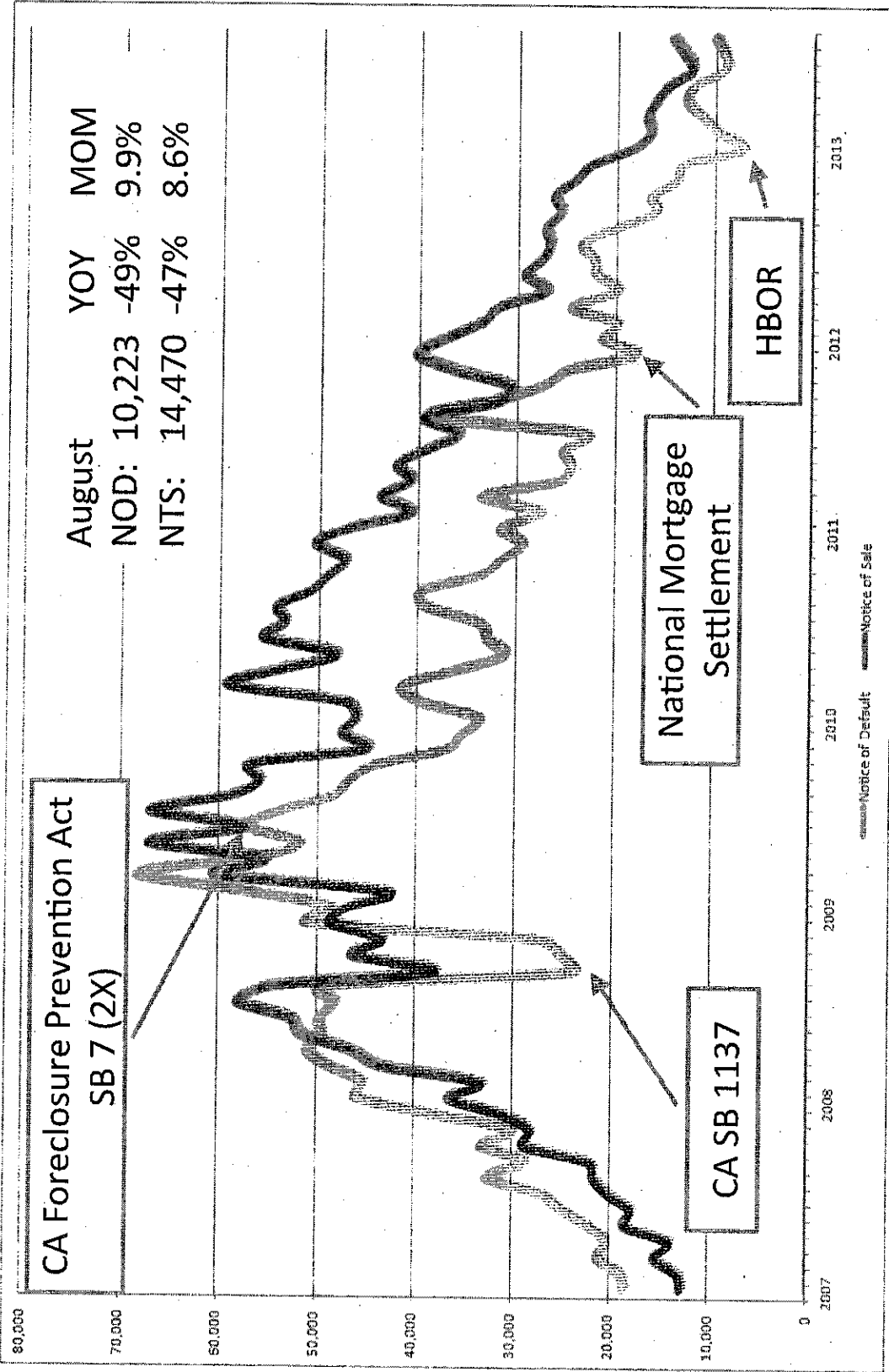
Sean O'Toole
Founder & CEO

PropertyRadar.com

12242 Business Park Dr, Suite 20, Truckee, CA
530-550-8801

sean@propertyradar.com

Foreclosure Filings California



CA Foreclosure Prevention Act
SB 7 (2X)

CA SB 1137

National Mortgage
Settlement

HBOR

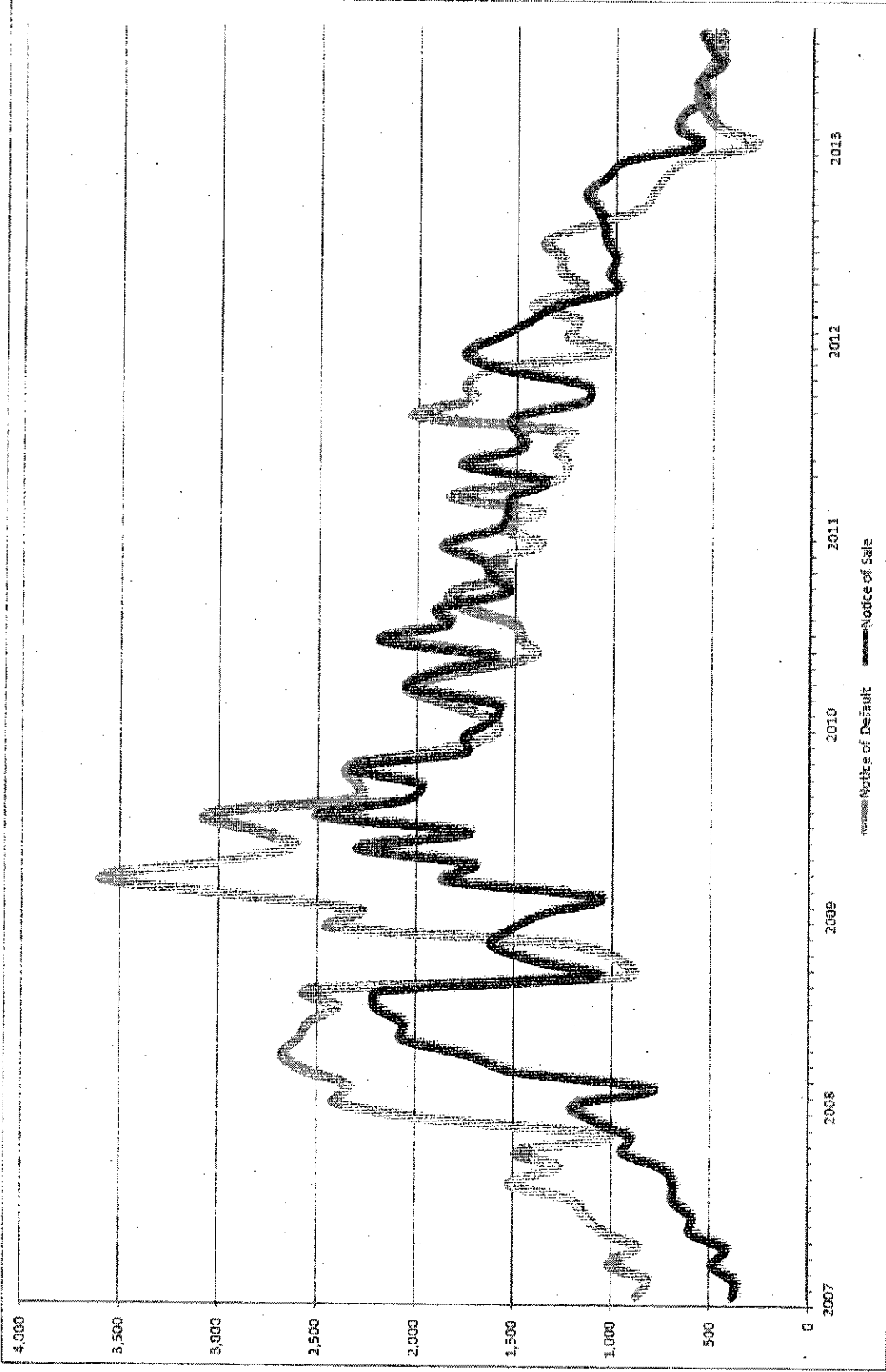
August
NOD: 10,223
NTS: 14,470

YOY -49%
MOM 9.9%

YOY -47%
MOM 8.6%

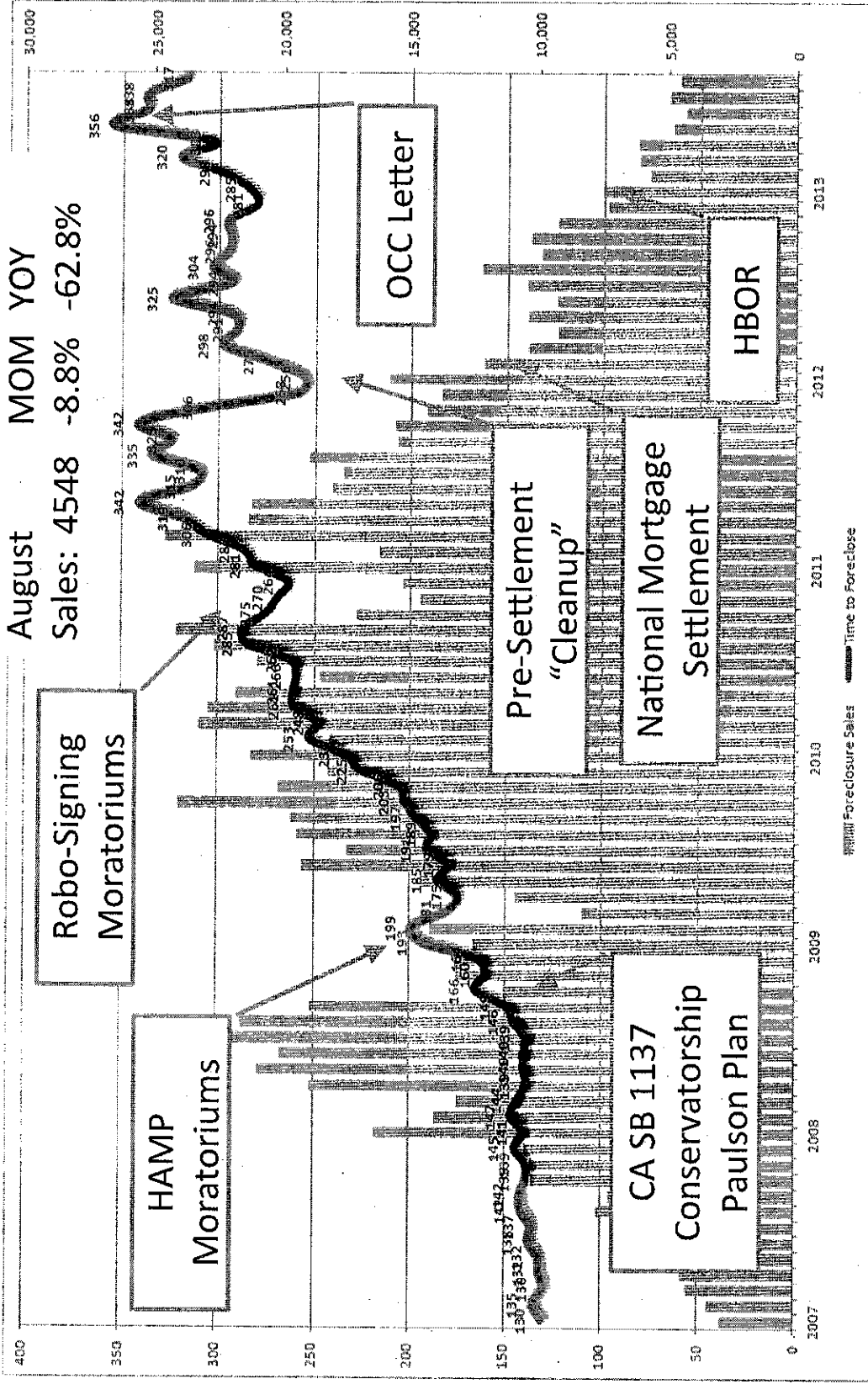
Notice of Default and Notice of Trustee Sale Filings by Month Recorded

Foreclosure Filings Orange County



Notice of Default and Notice of Trustee Sale Filings by Month Recorded

Trustee Sales & Time to Foreclose California



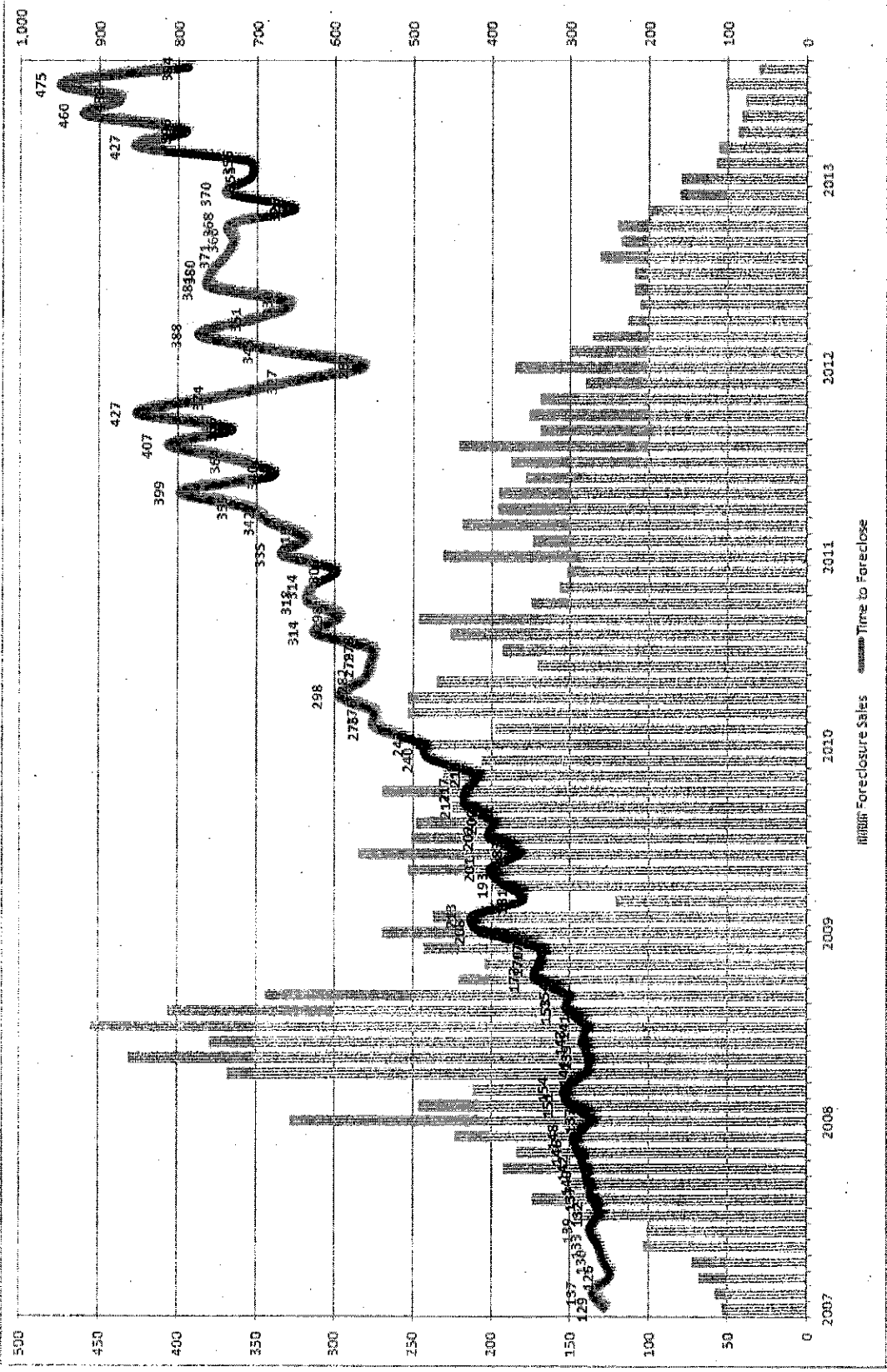
Time to Foreclose is calculated as the number of days between the recording of the Notice of Default, and date the property is sold at Trustee Sale. Values shown are the average Time to Foreclose for properties sold in the given month. Foreclosure Sales volume also shown for context.

Trustee Sales & Time to Foreclose

Orange County



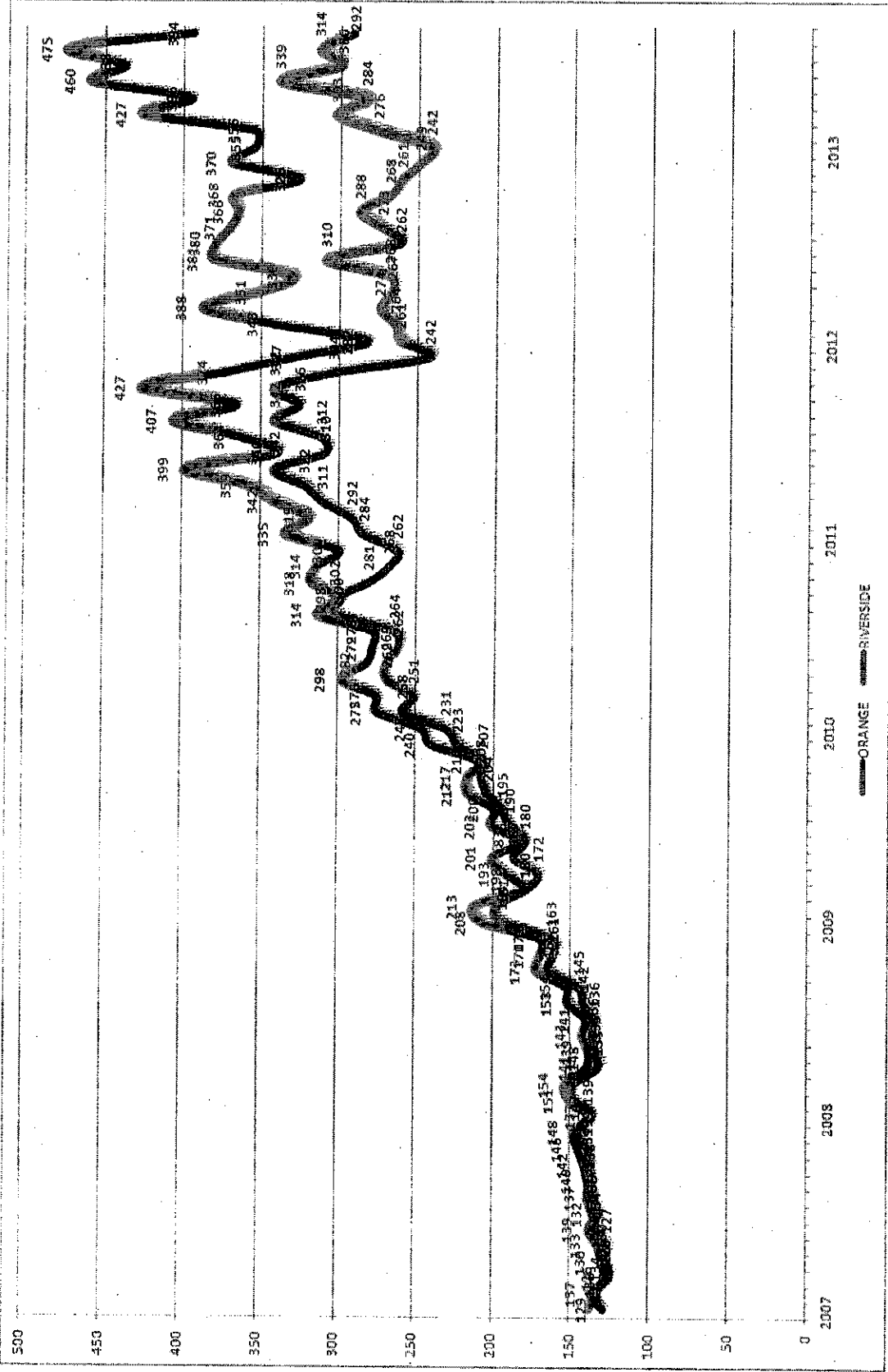
PropertyRadar®



Time to Foreclose is calculated as the time between the recording of the Notice of Default, and date the property is sold at Trustee Sale. Values shown are the average Time to Foreclose for properties sold in the given month.

Time to Foreclose

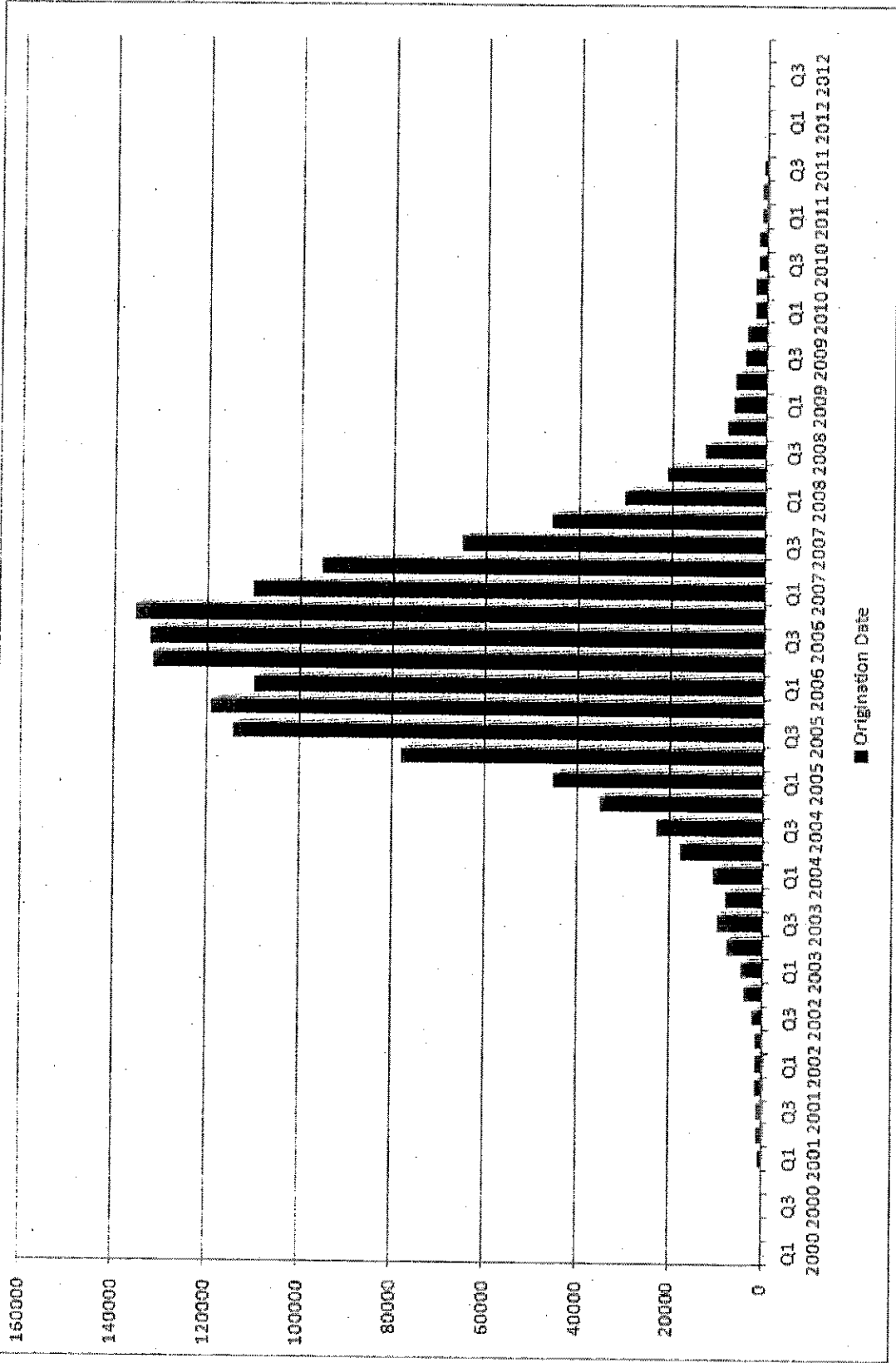
Riverside vs. Orange County



Time to Foreclose is calculated as the time between the recording of the Notice of Default, and date the property is sold at Trustee Sale. Values shown are the average Time to Foreclose for properties sold in the given month.

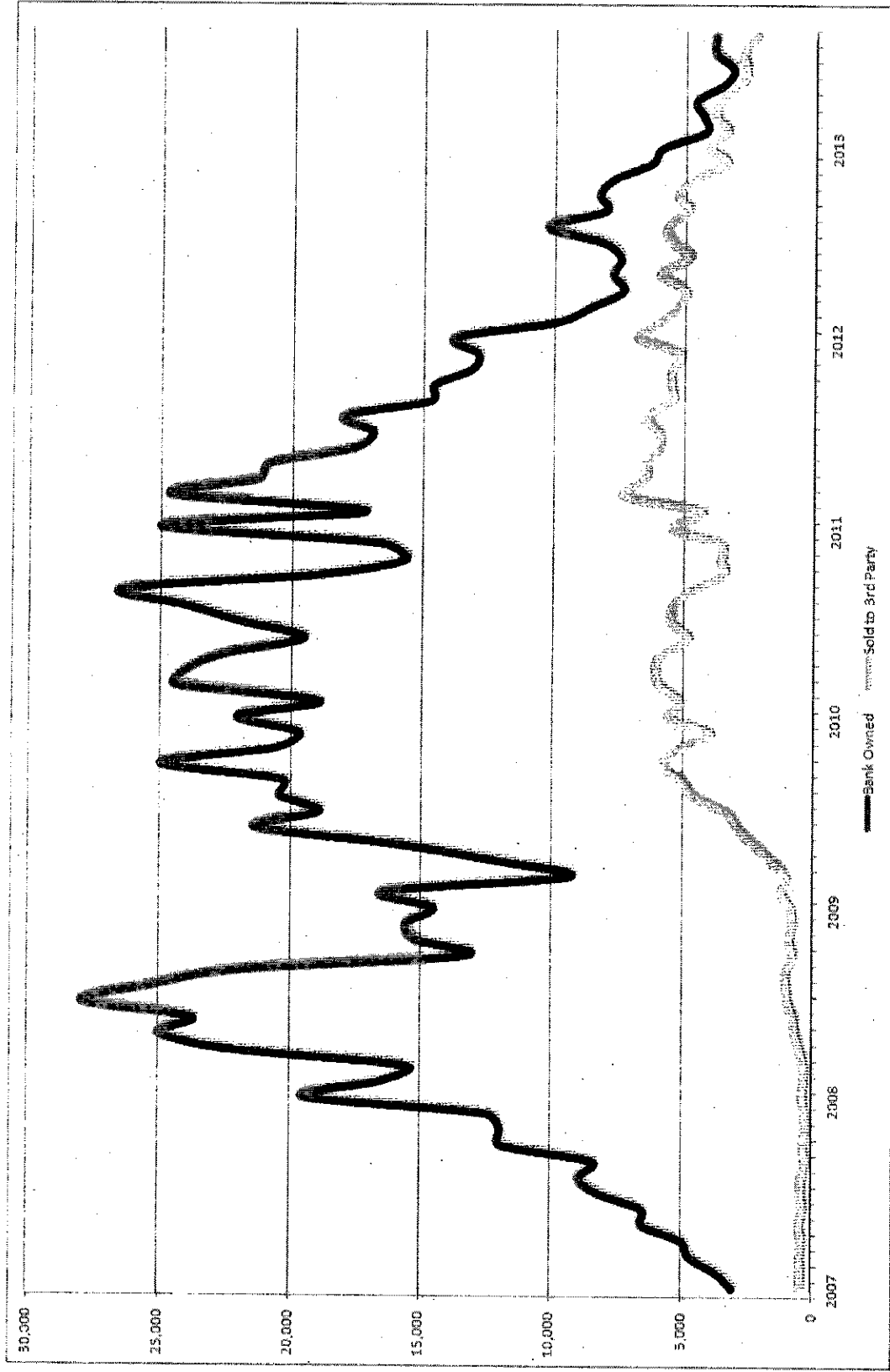
Trustee Sales by Loan Date

California



All foreclosures from January 2007 through August 2013 by the quarter in which the loan (DOT) was originally recorded

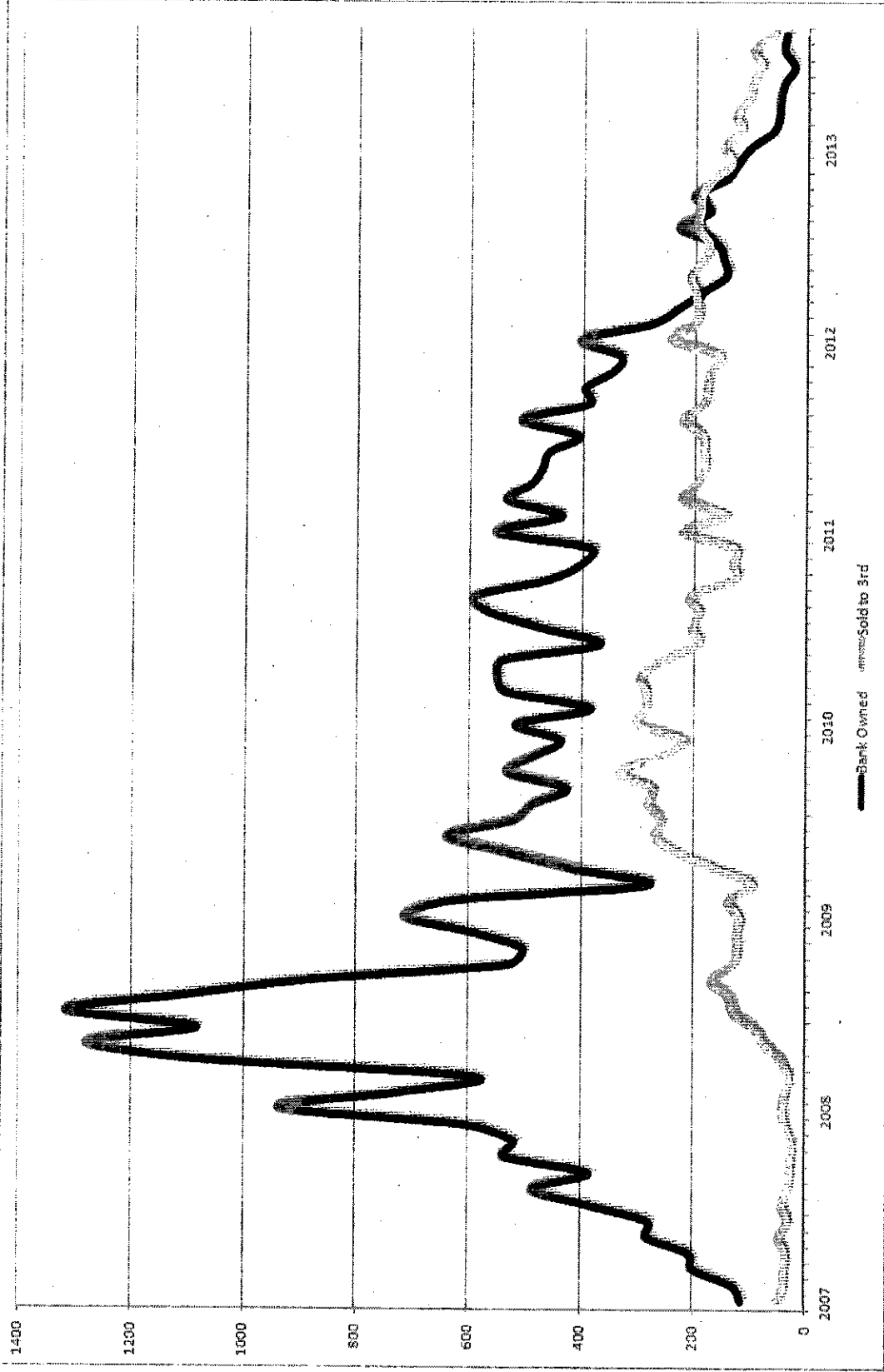
Trustee Sales by Purchaser California



Completed trustee sales separated by properties sold "back to bank" and becoming Bank Owned, or sold to a 3rd party purchaser.

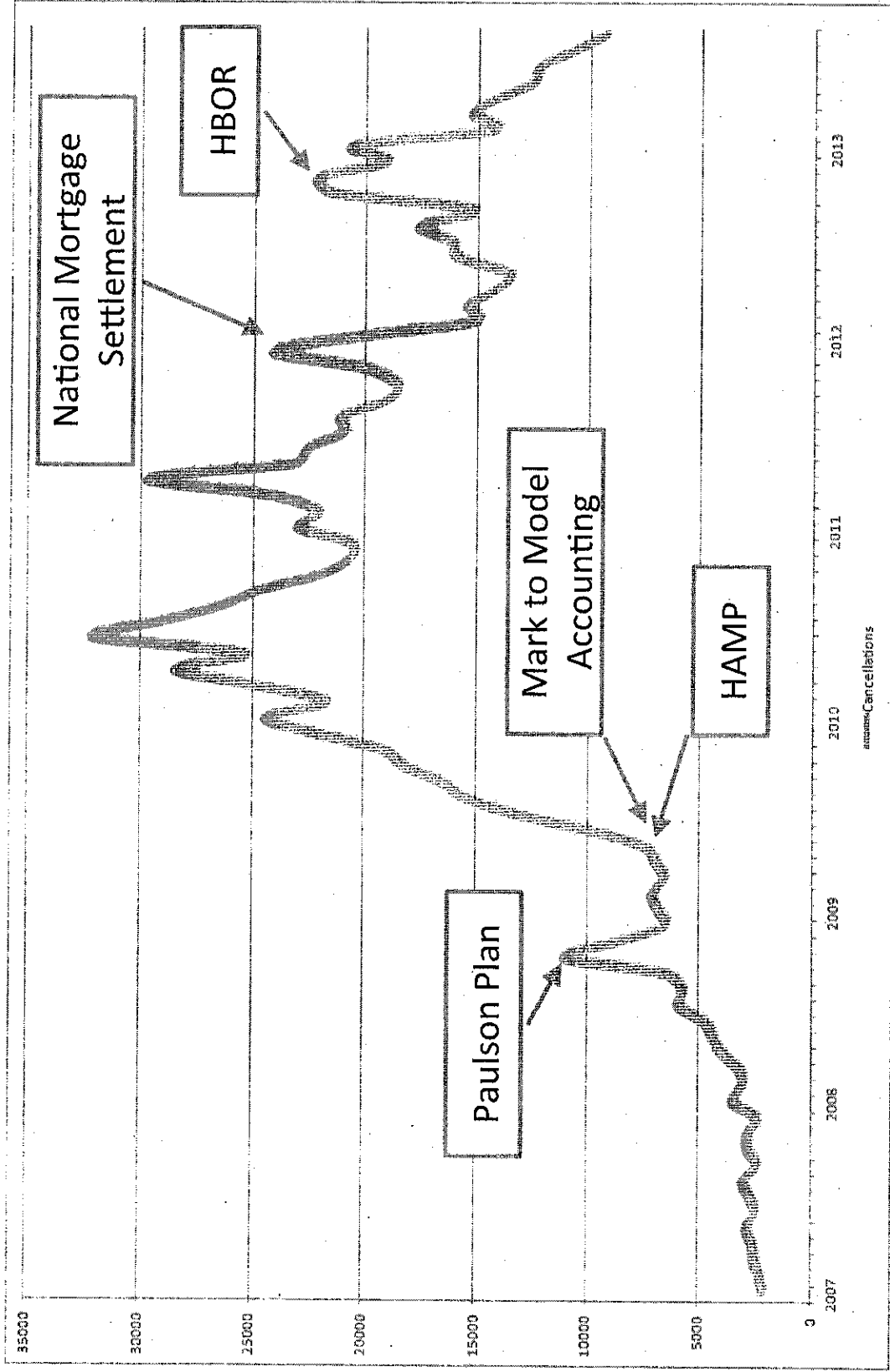
Trustee Sales by Purchaser

Orange County



Completed trustee sales separated by properties sold "back to bank" and becoming Bank Owned, or sold to a 3rd party purchaser.

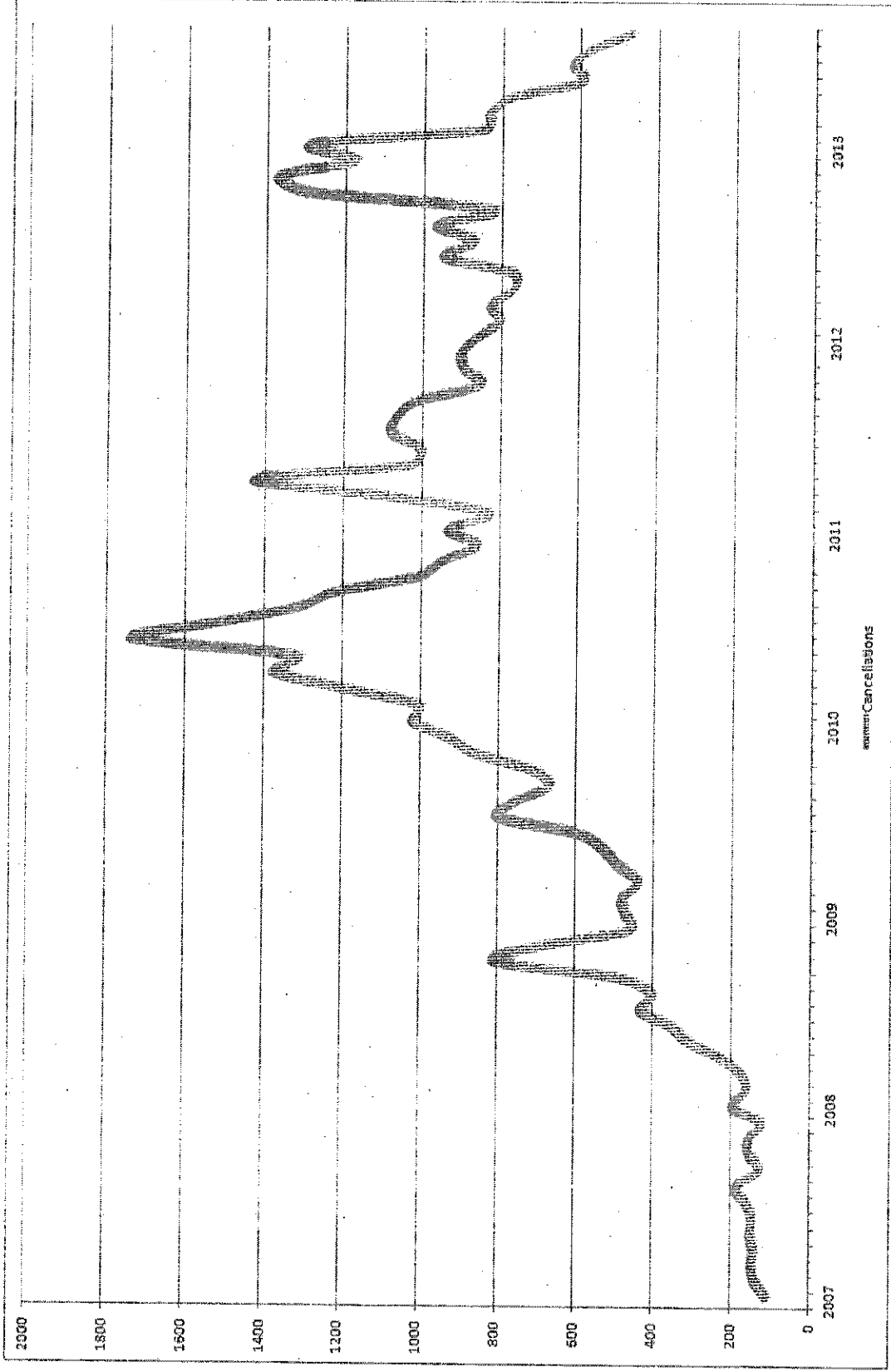
Trustee Sale Cancellations California



Cancellations of Trustee Sales as announced by Trustees on day of sale

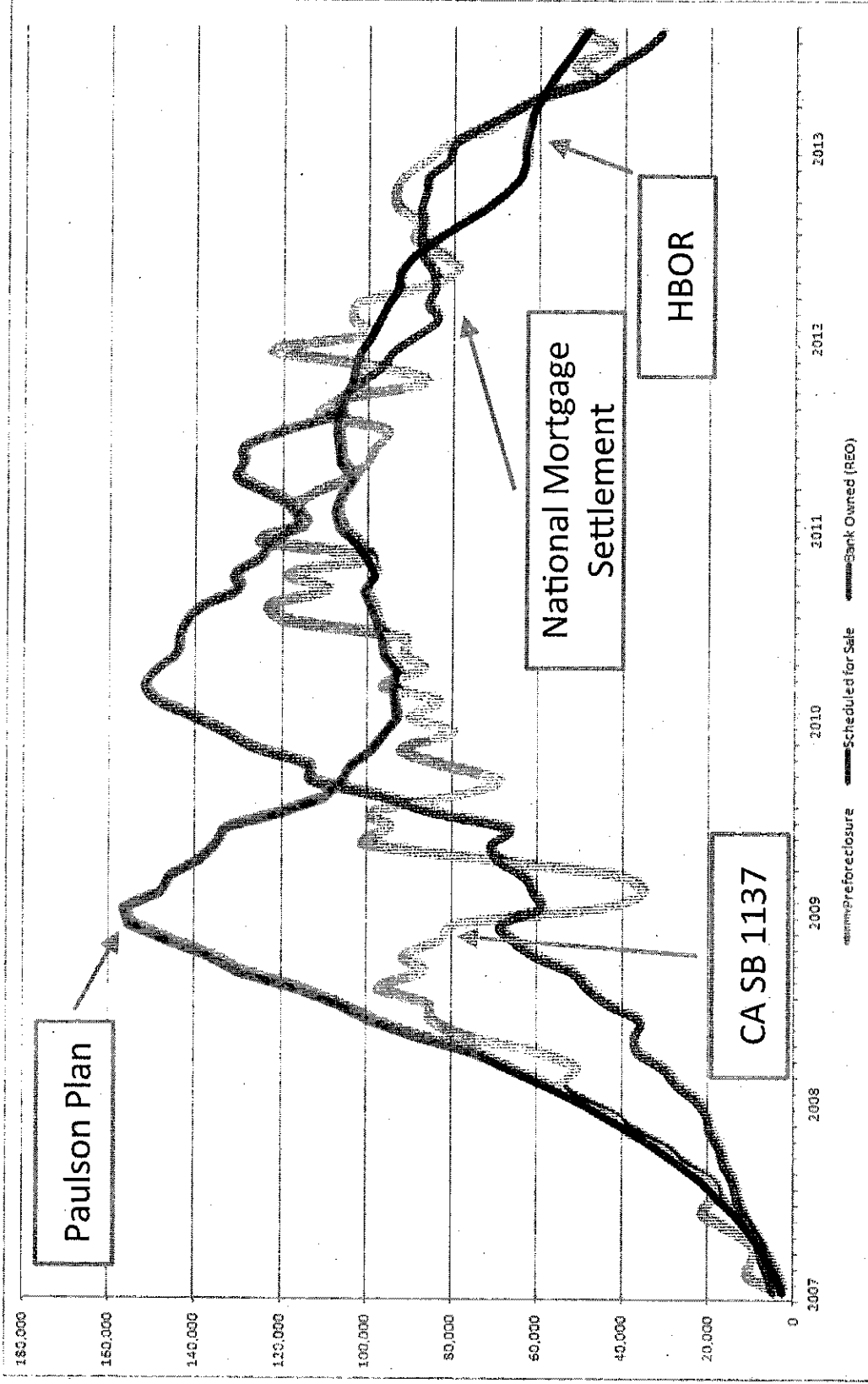
Trustee Sale Cancellations

Orange County



Cancellations of Trustee Sales as announced by Trustees on day of sale

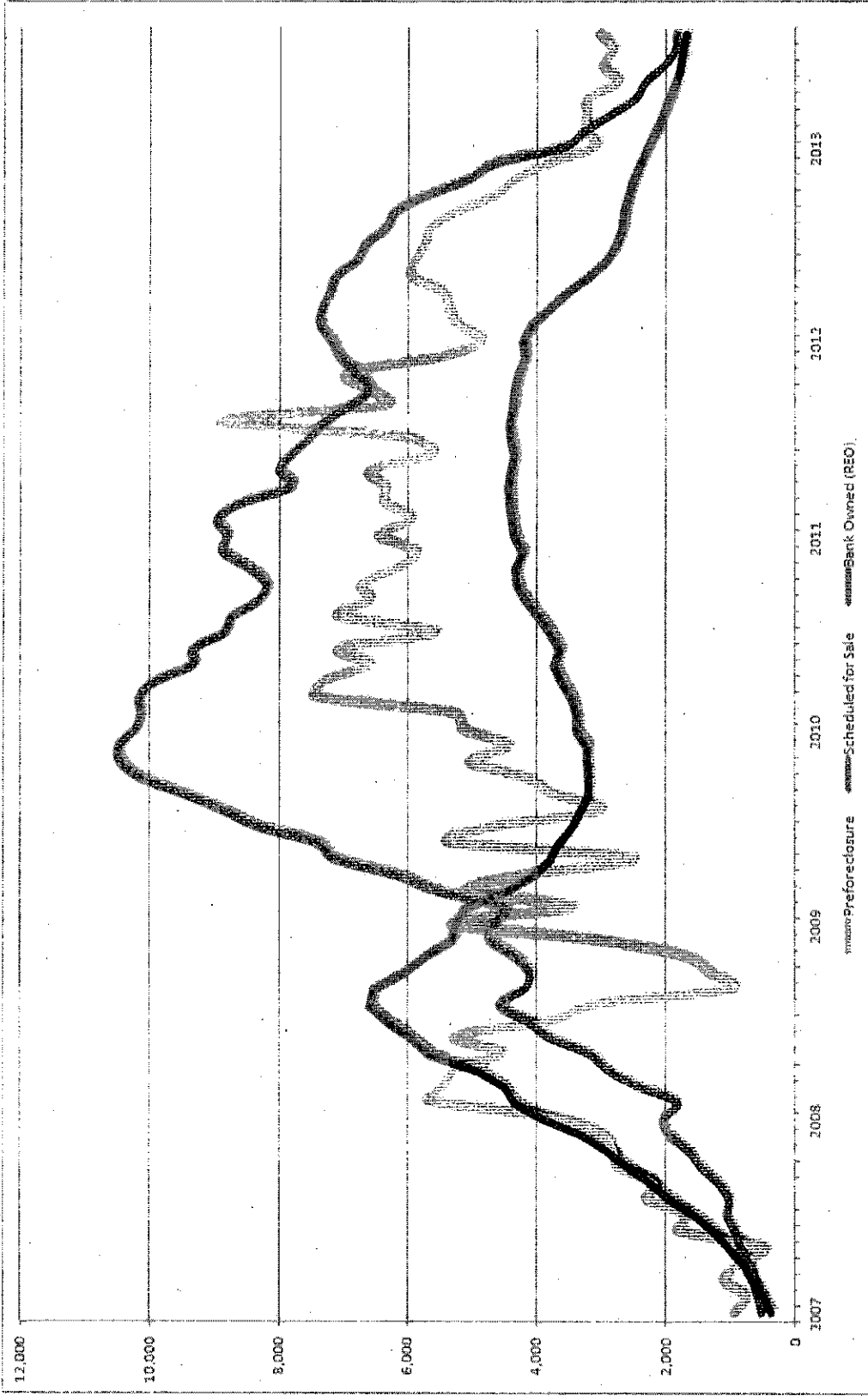
Foreclosure Inventories California



Preforeclosure inventory is estimated based on NOD filings and time to foreclose. Scheduled for sale inventory is the actual count of properties currently scheduled for trustee sale at the end of the month. Bank Owned is the difference between the number of properties that banks have taken back at trustee sale, vs. the number they have resold.

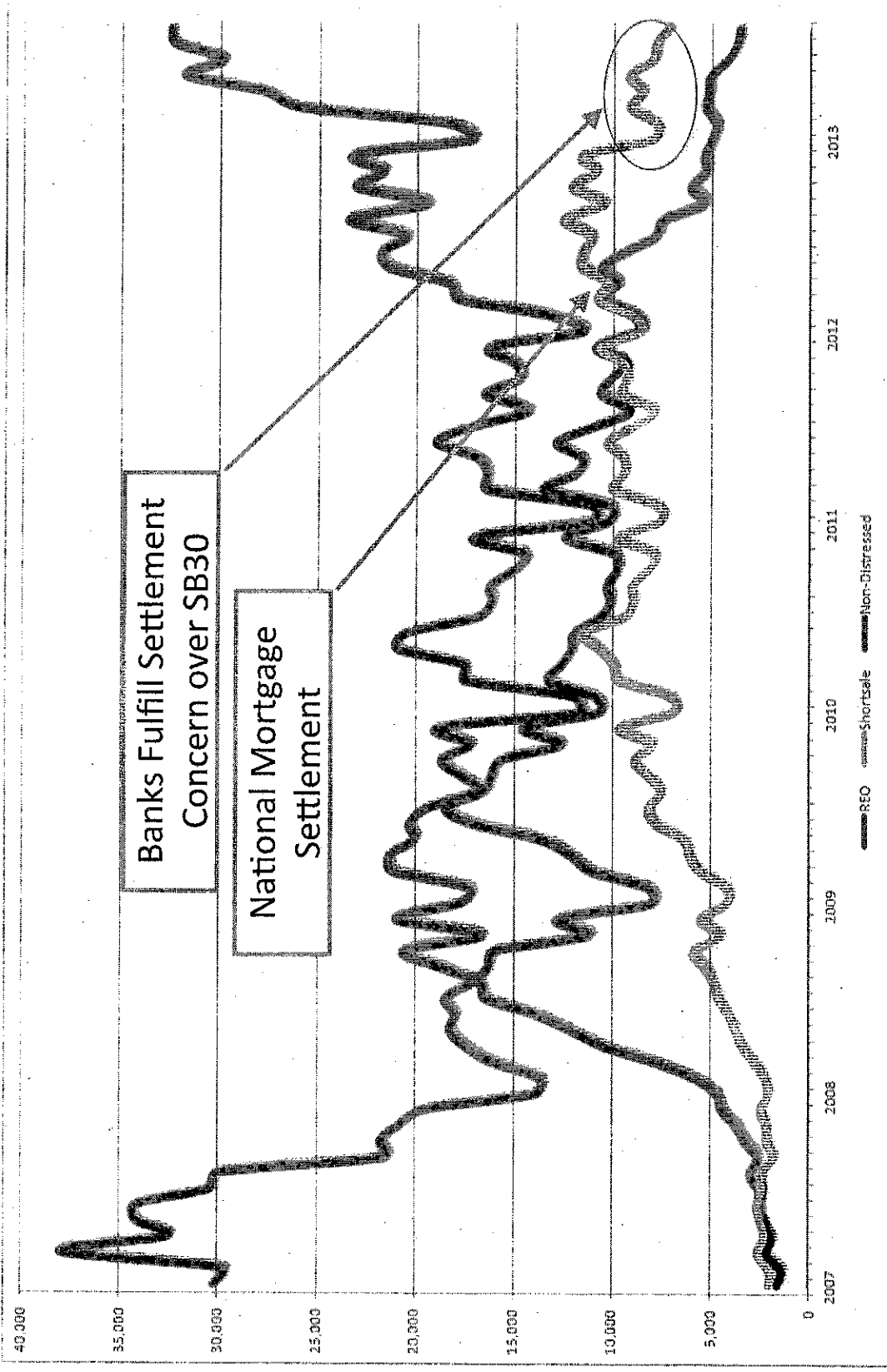
Foreclosure Inventories

Orange County



Preforeclosure inventory is estimated based on NOD filings and time to foreclose. Scheduled for sale inventory is the actual count of properties currently scheduled for trustee sale at the end of the month. Bank Owned is the difference between the number of properties that banks have taken back at trustee sale, vs. the number they have resold.

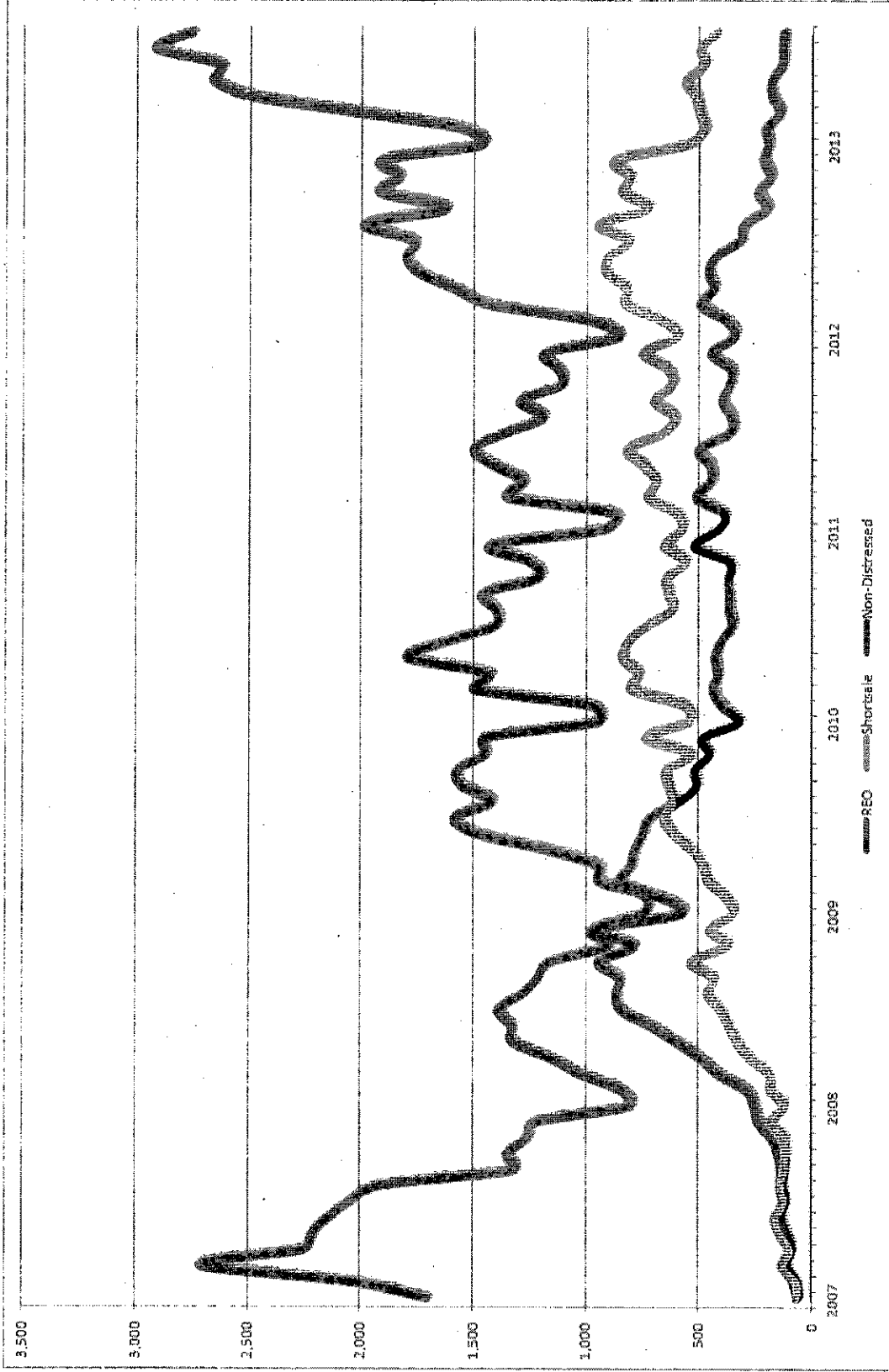
Distressed Sales California



Sales volumes are based on recorded market transactions, estimated debt, and foreclosure history

Distressed Sales

Orange County

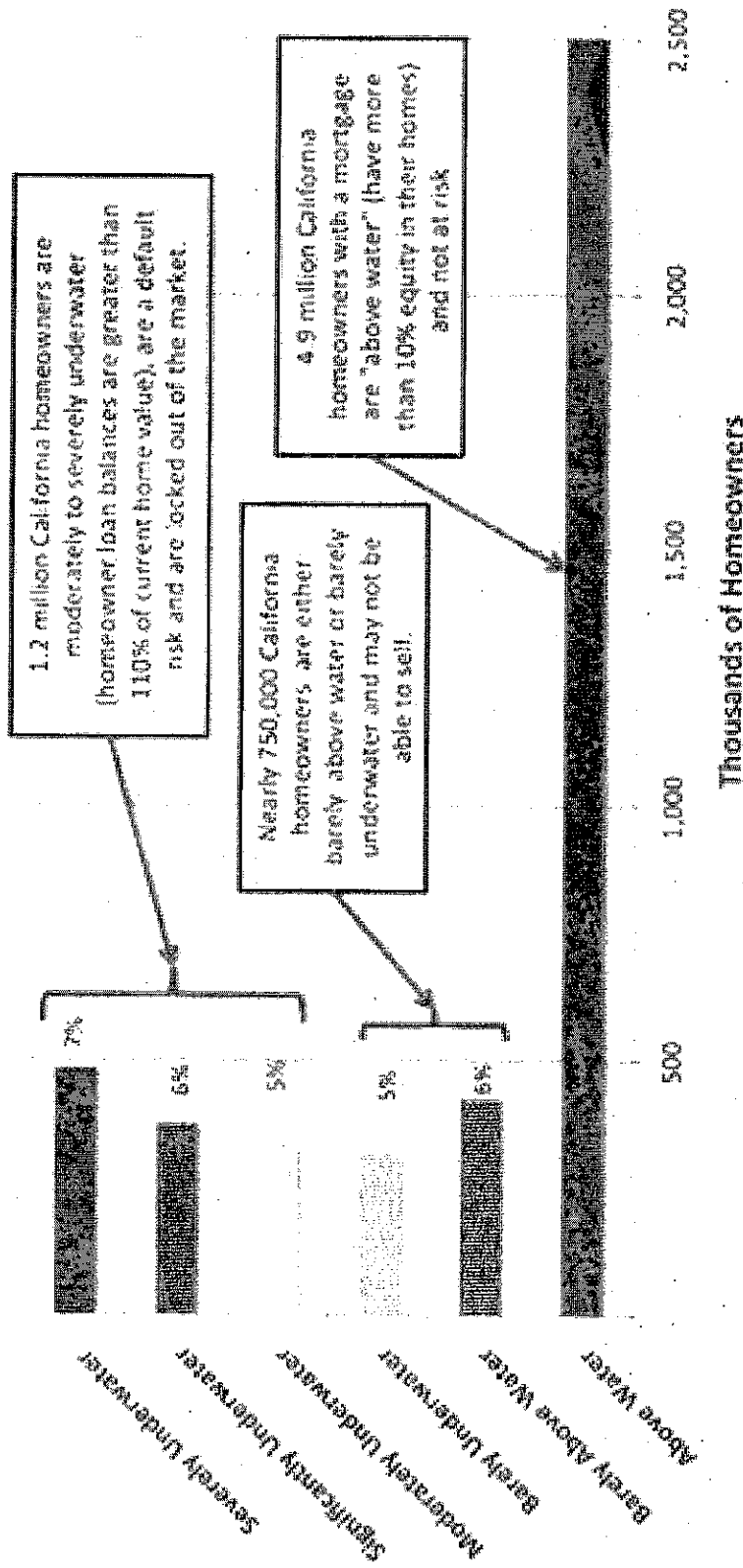


Sales volumes are based on recorded market transactions, estimated debt, and foreclosure history

Negative Equity California



California Homeowner Equity, August 2013



Negative equity is modeled based on recorded loans and estimated home values

Testimony of
John Hanna, General Counsel of Department of Business Oversight
Before the Senate Committee on Banking and Financial Institutions
An Implementation Update on the
Homeowner Bill of Rights
INFORMATIONAL HEARING
October 1, 2013

I. Introduction

Mr. Chairman and members of the committee, I'm John Hanna, General Counsel for the Department of Business Oversight. Thank you for the opportunity to appear before you at this hearing. I've been asked to provide information about the Department's implementation of the Home Owner Bill of Rights.

II. About the Department

The Department of Business Oversight is a new department that was formed on July 1, 2013 pursuant to the Governor's Reorganization Plan, Number 2. The Department consists of the former Department of Corporations and the Department of Financial Institutions.

The Department of Business Oversight provides consumer protection and regulation of businesses engaged in financial transactions. The Department oversees a variety of financial services, products and professionals, which include, but are not limited to, state-licensed banks, credit unions, mortgage lenders, servicers and loan originators, finance lenders and escrow companies.

III. Department's Lending Laws

Under the Department's jurisdiction, mortgage loans are arranged and serviced by state banks, credit unions, California Residential Mortgage Lending Act licensees and California Finance Lenders Law licensees.

A. Banks

- Currently, the Department has 170 state Banks.
- The Department conducts regulatory examinations every 12 to 36 months.

B. Credit Unions

- The Department has 149 Credit Unions.
- The Department conducts regulatory examinations every 12 to 18 months.

C. CRMLA

- There are 362 California Residential Mortgage Act licensees operating at 3,613 locations.
- The Department's conducts regulatory examinations every 4 years, but examination cycles for certain licensees are accelerated depending on compliance issues; the Department may also conduct non-routine exams at any time.

D. CFL

- And finally, there are 374 California Finance Lenders Law licensees making real estate loans operating at 1,000 locations.
- The Department conducts routine regulatory examinations every 2 years, but may also conduct non-routine exams at any time.

C. Protecting Borrowers under DBO Laws

In 2012 alone, the Department conducted 113 regulatory examinations of banks and 153 regulatory examinations of credit unions.

Additionally, the Department's program responsibilities for protecting borrowers under the California Residential Mortgage Lending Act and the California Finance Lenders Law included the following:

- 1) Detecting and remedying violations of borrower protections through regulatory examinations - a total of 1,310 regulatory exams conducted in 2012 under both law (98 CRMLA exams; 1,212 CFL exams);
- 2) Taking formal enforcement action through the administrative and judicial process. There were 33 total administrative and civil actions taken based on mortgage loan activities in 2012. (21 CRMLA and 12 CFL); and
- 3) Screening potential violators through licensing 722 total new licensees (36 CRMLA in 1,235 branches and 686 CFL).

Furthermore, the Department is committed to providing informational resources to consumers throughout California. In 2012, the Department provided information at more than 250 community events, including mortgage loan servicing workshops, throughout the state. Additionally, the Department partners with community based organizations and other government agencies, such as Keep Your Home California, to distribute information related to home preservation.

IV. Homeowner Bill of Rights

Effective January 1, 2013, SB 900 and AB 278, also known as the Homeowner Bill of Rights or the Foreclosure Reduction Act, reformed California's non-judicial foreclosure process, so that borrowers now have greater protection from wrongful foreclosures, and a meaningful opportunity to be considered for, and obtain loan modifications or other alternatives to foreclosure.

Residential lenders and servicers, state banks and credit unions regulated by the Department are impacted by this law.

Many provisions apply to mortgage servicers that have foreclosed on more than 175 homes during the preceding year. Currently, the Department of Business Oversight has **20 licensees** above the 175 threshold - 17 are California Residential Mortgage Lending Act licensees, and three are dual licensees under California Residential Mortgage Lending Act and California Finance Lenders Law.

The Department has published a list of mortgage servicers under its jurisdiction with more than 175 foreclosures on its website, and will update this list every six months.

The Department was allocated five corporation examiners and one attorney as a result of SB 900 and AB 278. Funding authorization for those positions was given in the budget enacted this past July. The Department is in the process of having those positions filled.

V. Implementation of the Homeowner Bill of Rights

The Department has taken several key steps to implement changes pursuant to SB 900 and AB 278.

1. Staff Training

In November and December 2012, the Department developed training material for staff and conducted multiple trainings of examination, enforcement and call center staff. The training consisted of a thorough explanation of the Homeowner Bill of Rights, and changes to examination procedures as a result of the new laws.

Training material consisted of a power point presentation, summary of the law, a chart of statutory references of significant changes and a flow chart explaining notice requirements and the loan modification and appeal process for mortgage servicers above the 175 threshold.

2. Release

Next, the Department published Release 65-FS on December 31, 2012, which serves as a compliance guide for licensees. The Release provides an explanation of the Homeowner Bill of Rights, as it applied to mortgage servicers with 175 or fewer foreclosures, mortgage servicers with more than 175 foreclosures, provisions operative on January 1, 2018 and a summary of other foreclosure law changes in 2012.

3. Notice to all CRMLA and CFL licensees

The Department also mailed notices to all of its licensees under the California Residential Mortgage Lending Act and California Finance Lenders Law which among other things, informed licensees about the HOBR and the 175 threshold reporting requirements under the new law. Every year, the Department mails notices to its licensees, which provide instruction to for filing their annual reports. The Department included information about the new law in the 2013 notice.

4. Consumer Alert

In partnership with the former Department of Real Estate, the Department issued a Consumer Alert on mortgage modification and foreclosure scams, which included a summary of the changes by SB 900 and AB 278. The Department distributed this alert to the media and community partners throughout the state.

5. List of Mortgage Servicers with more than 175 Foreclosures

Soon after the Department of Business Oversight was formed on July 1, 2013, the Department published a list of mortgage servicers regulated by the Department with more than 175 foreclosures in 2012 on its website.

VI. What the Department has Seen since the Implementation of HOBR

A. Trends

During the past nine months, since the Homeowner Bill of Rights has been effective, the Department has noticed the following trends:

- A significant decrease in the number of complaints received related to loan modifications and foreclosures.
 - In 2013 YTD, the Department has received 141 complaints related to loan modification, compared to 312 complaints in 2012 and 713 complaints in 2011. Assuming the same volume of complaints for the remaining three months in 2013, loan modification complaints have **decreased by 501 complaints** or a **reduction of 70%**.

- In 2013 YTD, the Department has received 31 complaints related to foreclosure, compared to 69 complaints in 2012 and 83 complaints in 2011. Assuming the same volume of complaints for the remaining three months in 2013, foreclosure complaints have **decreased** by **36 complaints**, or a **reduction of 43%**.

B. Complaints

The Department has received a total of **213** complaints in 2013 YTD that includes loan, modifications, foreclosures and Homeowner Bill of Rights Issues. (141 DOC loan mod., 31 DOC foreclosures, 18 DOC complaints, 16 DFI loan mod, 7 DFI foreclosures = 213)

155 of those complaints were related to Loan Modifications, but separate from HOBR issues. For example, several complaints consisted of borrowers requesting help with loan modifications when the entity did not provide modifications, borrowers were appropriately denied modifications, borrowers were in bankruptcy pending foreclosure or not considered a "borrower" for the purposes of HOBR.

38 complaints were related to Foreclosures. The nature of these complaints varied, but were separate from HBOR issues.

20 complaints were specific Homeowner Bill of Rights issues.

- 12 complaints are still pending investigation;
- 8 complaints have been investigated to completion. The complaints primarily alleged dual track violations. Three borrowers received loan modifications after the complaints were investigated and the entities were contacted by the

Department. The other five complaints were investigated, but did not reveal wrong doing or HBOR violations by the entities.

C. Enforcement

As of this date, the Department has no enforcement actions under the Homeowner Bill of Rights. However, violations may commonly be found in an examination before rising to the level of an enforcement action.

In 2013 YTD, there have been 40 examinations of licensees under the California Residential Mortgage Lending Act. Out of those 40 examinations, five entities were found to have Homeowner Bill of Rights violations.

The violations varied, but most commonly consisted of lack of evidence that the entity made the requisite attempts to contact the borrower by making at least three phone calls; or lack of evidence that a borrower received specific notices.

An entity is provided written notice about the violations and provided 30 days to respond to the notice with an explanation, supporting documents and corrective action. Entities are rated internally depending on the number of violations. The number of violations will accelerate that entity's examination cycle. Notices have been provided to all five entities with HOBR violations. Examinations for those entities are still pending.

D. Servicer Awareness of HBOR and Their Responsibilities Under the new Law

We believe that servicers are aware of the Homeowner Bill of Rights and their responsibilities under the law. As explained earlier, the Department has provided notices to its licensees about the changes to the law. Additionally, the

Department has provided a detail summary of the law through a Release to provide guidance for compliance by licensees. Furthermore, significant decrease in consumer complaints may also reflect that servicers are adhering to the necessary requirements and borrowers are receiving the protections necessary under the law.

VII. Conclusion

The Commissioner of the Department of Business Oversight is committed to fully implementing the provisions of the Homeowner Bill of Rights, as well as the National Mortgage Settlement.

Thank you for the opportunity to provide you with this testimony today. If you have any questions, I'd be happy to answer them now.

Elba Serrano
Senior Housing and Financial Counselor
530 S. Boyle ave. Los Angeles, CA 90033
323-604-1984

HBOR Informational Hearing Remarks

ELACC's mission is to help families create and sustain their assets and wealth with the goal of increasing their quality of life.

Housing counseling agencies are a trusted resource that provide individualized assessments and inform clients about their options and rights as homeowners. Housing counselors empower clients with the tools and information needed to seek assistance from their servicer. As an industry we have worked tirelessly with clients with financial issues throughout the economic crisis.

Pre HBOR:

In my experience working with homeowners prior to the implementation of HBOR, there were 4 challenges that borrowers faced with servicers across the board: run around, dual tracking, lost paperwork, and the lack of a dependable timeline for receiving results.

- **Run around:** Borrowers received contradictory information from many different reps leading to confusion about the loss mitigation process. This was specially a challenge if the borrower requested to speak to a rep in their native different language. This led to denials, delays in completing packets and foreclosures that could have been avoided.
- **Dual tracking:** borrowers receiving foreclosure notices while trying to work with loss mitigation.
- **Lost paperwork:** Repeated, unspecific requests for documents leading to delays in applications. This was also a strain for our organization's resources as it required us to repeatedly FAX documentation that had already been FAXED.
- **Lack of a dependable timeline:** the timeline for receiving an answer on an application was usually over 6 months. Servicers did not notify borrowers that a packet was received or being reviewed. Many borrowers saw themselves seeking assistance from scammers that promised a quicker outcome. Very few clients that were able to navigate this process were able to obtain HAMP and non-HAMP modifications. Most borrowers had to look at alternatives like borrowing money to pay arrears (not a long term solution), short sales, deed in lieu, and foreclosures.

Post HBOR:

With the implementation of the HBOR, I have seen some positive changes and also some challenges that borrowers are still facing today.

- **Run Around:** Most of the servicers have implemented in the process of assigning a borrower to a SPOC which works with the borrower throughout the loss mitigation process. The challenge in dealing with the SPOC is that he/she is never available. The SPOC does not speak the borrowers' native language and there had been many times that the borrower gets reassigned to a different SPOC. I had a client that had been trying to obtain

assistance for over 6 months and was told that there was nobody that could speak to him in Spanish. We called the same servicer together and it only took me 5 minutes to get a person to speak to us in Spanish. Another challenge with the SPOC is the constant change in who the borrower should call. In one particular incident, one my clients received 4 different letters in week with 4 different SPOCs' names.

- **Dual Tracking:** the number of borrowers facing dual tracking has reduced and servicers are now suspending foreclosures instead of postponing them for a month at a time. The challenge is that the definition of a complete packet varies from servicer to servicer and also from case to case.
- **Lost Paperwork:** As a counselor, this issue has improved due to the access of portals that allow me to scan and upload packets as opposed to faxing. Borrowers seeking assistance on their own do not have access to these portals and still have to resort to faxing. Most servicers are providing letters acknowledging the receipt of a packet but this letter is very general, normally comes with a new application (which has already been submitted) and contains no specifics on whether a document is missing or not.
- **Timeline in receiving results:** This has improved and the usual timeline is 3-6 months. The challenge has been in getting the servicer to be satisfied with a complete packet. The number of HAMP modifications have increased.

With the protections of HBOR I was able to assist the a family that had been trying to obtain assistance from their servicer for over 2 years. This family came to my office 3 weeks prior to their sale of their property. They had fallen behind on their mortgage payments due to loss of income. Mrs. had stop working after their 10 year daughter had to have surgery due a rare disease. I was able to help them suspend their foreclosure sale and worked with the SPOC to complete a packet that lead to HAMP modification.

Even though the numbers have decreased, there are still families walking into our agency asking for assistance. Unfortunately, this family is the exception and not the norm. Their case exemplifies how when HBOR if followed; it can have a drastic impact on the service that a client receives and the results they can achieve. It is important that servicers are held accountable.

Thank you for the opportunity to talk about this important issues facing our community.

My name is Vincent Howard and I am the managing shareholder at Howard Law, P.C., in Costa Mesa. The focus of my practice is in the area of wrongful foreclosure, and my team of attorneys and professionals has been representing homeowners who have faced abusive foreclosure tactics since the meltdown of the housing market back in 2007.

I am here today on behalf of the Consumer Attorneys of California (CAOC). I serve on CAOC's legislative committee where I have had the pleasure of working with some very fine people regarding this bill.

This committee has asked me and others here today to give my opinion on how California borrowers are fairing under the new legislation. In a nutshell, I am of the opinion that though the intent of the Mortgage Relief Bill and even its progeny the Homeowners Bill of Rights (HBOR) was and is to stop the tidal wave of preventable foreclosures from happening by forcing lenders to adhere to the law and by encouraging lenders and servicers to reach out to homeowners and look for meaningful alternatives to foreclosure, I believe that servicers have still yet to do all that they can to meaningfully review applicants for alternatives to foreclosure.

While the great State of California created legislation to try to help "level the playing field" and compel servicers to look into loan modifications prior to filing foreclosure documents, Howard Law PC still experiences a steady volume of calls from borrowers that are being "dual-tracked," which occurs when the servicer or authorized agent initiates foreclosure proceedings (to include recording a notice of default, notice of sale, or conduct a trustee's sale) while the first lien modification application is pending and until the mortgage servicer or authorized agent provides the borrower with a specific written determination regarding the borrower's eligibility for the requested loan modification. [CC 2924.18]

Additionally, when our clients' servicers do finally deny them for a loan modification, the servicers provide vague reasons for the denial. In circumstances that warrant them to provide homeowners the inputs used for the servicers Net Present Value Calculations or NPV calculations, the servicers fail to provide them. In each circumstance, what seems like a simple process that should be transparent and easy for the homeowners to understand is being withheld from them. By doing this, it makes it difficult for clients to understand why their servicer is denying them for something they believe they should qualify for to begin with.

So in summary, two of the most popular violations we still see are dual-tracking violations and improper denials.

It is imperative that we ensure that as part of the non-judicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options. This wasn't accomplished under the Mortgage Relief Bill because we have seen throughout the years that unless there is some sort of meaningful enforcement mechanisms in place, servicers simply refuse to follow servicing rules. Moreover, they have repeatedly demonstrated that they are not interested in reviewing homeowners for available loss mitigation options including loan modifications they may qualify for because they wrongfully deny them or they continuously

keep them in limbo under the guise that the homeowner has not submitted a complete package when in fact they have sent several complete packages to the servicer.

I believe the intent of the new legislation that took effect this year, was to too ensure that homeowners would absolutely have a private right of action, something that was disputed originally under the Mortgage Relief Bill until the *Mabry* Decision, and that there would be an incentive for attorneys to represent homeowners in these matters by providing for attorneys fees for acquiring injunctive relief for homeowners.

Though we are seeing no issues with the private right of action, we are seeing issues with the awarding of attorneys fees for any injunctive relief. though it is clear in the legislative intent that attorneys who represent distressed homeowners may receive attorneys fees for injunctive relief at both the Temporary Restraining Order Stage and at the Preliminary Injunction Stage, Judges are still not uniform in this practice as some will grant attorneys fees at either the TRO or PI stage while some will only award fees if you are successful at the PI stage. Moreover, this has also become a loophole for the servicers if the later scenarios occur because of the safe harbor provision built into the law. If a judge grants a TRO then the servicer can easily remedy the situation by rescinding the Notice of Default thus making a PI a moot point. If this happens with a judge who only allows attorneys fees at the PI level, then the attorney representing the homeowner receives no attorney fees thus dis-incentivizing the attorney to even take the case.

In conclusion, California's new Homeowner's Bill of Rights was suppose to make the mortgage and foreclosure process in California arguably more fair and transparent thus forcing servicers to meaningfully consider homeowners for the various modification programs that are out there for them. Instead, our clients still see little change in their circumstances since this crisis began, they are still being denied for modifications they feel they deserve and for those who are denied, they just want to understand why. All the while, servicers are allowed to blatantly violate the law with little consequence.



Vincent Howard

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Debt Solution: www.HowardLawPC.net

As introduced, my name is Joe Sanders and I am the Managing Director of the Servicing division at First Mortgage Corporation.

First Mortgage is a 41-year old medium size California Mortgage Banking Company currently servicing close to 5 billion in FHA, VA and GSE Servicing. We are strictly a FHA, VA & GSE Lender/Service with a primary focus on serving FHA's mission, which is to create strong, sustainable communities by offering quality FHA home-loans to ALL applicants who qualify. We do not sub-service, nor do we originate or service portfolio loans. We also do not deny or disregard applicants solely based upon their fico score as do most banks, which is known as "credit overlays".

To that end, I hope that my testimony today can provide the Chair and the committee members with a unique insight on the affects the HBOR has had on a non-depository California mortgage banking company such as First Mortgage Corporation.

Since the implementation of the HBOR, First Mortgage Corporation has completed approximately 175 Loan Modifications, most of which were FHA and the remaining were VA, CalHFA or Fannie Mae Loan Modifications. Considering that we are required by the GSE's, HUD, VA and CalHFA to offer and review ALL Home Retention and Foreclosure Prevention options, not one of the Loan Modifications we have completed this year were a product of the requirements under the HBOR.

Due to some of the strict requirement under the HBOR, First Mortgage has had to increase our Loss Mitigation and Foreclosure staff by approximately 20% solely to ensure compliance with the HBOR. Whereas prior to the HBOR we staffed to ensure compliance with the GSE's, HUD, VA and CalHFA, **as the HBOR does not exempt those loan types.**

As stated, First Mortgage is a FHA/VA Lender/Service. All of our FHA and VA loans are secured in Government National Mortgage Association pools ("GNMA"). We are required to advance interest to the GNMA security holders on the 15th of each month regardless of whether or not we have received payment from the borrower. As a result of the HBOR, First Mortgage has recently started to see an increase in the (aggregate) average advance amount on GNMA defaulted loans in California, which we have determined is a direct result of the extended non-judicial foreclosure process in California. Particularly on applicants who apply but do not qualify for Home Retention under FHA/VA guidelines, or when a borrower request Home Retention in bad faith or as a measure to delay the foreclosure process.

We continue to advance interest until the foreclosure is complete. But more importantly, we recover our advances through a FHA claim but only receive a debenture rate of interest rather than the coupon rate of interest we advance to the security holders. The debenture rate of interest is much lower than the coupon rate we advance at. Therefore, the longer the default continues the more money we lose if we ultimately end up filing a claim.

We have also experienced increased difficulty in foreclosing non-judicially as we struggle to understand the ambiguous sections of the HBOR. The challenge stems from the varying interpretation of some of the provisions.

We do understand and applaud the California legislature for their intent behind the HBRO, but it must be understood that HBRO has incidentally employed predatory attorneys and unscrupulous third parties that try and leverage us with threats of lawsuits and claims of violation of the HBOR. Legal counsel (as a precautionary matter) must always review those frivolous threats and claims, but it cost time and money to do so.

First Mortgage has also been sued twice under the HBOR; one was wrongfully filed and complaint was eventually dismissed once we obtained a "completed" package from the borrower. Fortunately, in that case, we were able to qualify the borrower for a FHA loan modification, but it still cost more than \$7,000 for legal representation; yet we did nothing wrong. The other lawsuit is still pending but we believe with absolute certainty that we did not violate the HBOR, as we proceeded with a foreclosure sale 32-days after issuing our denial letter with no appeal from the borrower. But in both cases we have spent thousands of dollars in legal expenses even though we did not violate any provision in the HBOR.

We believe the provisions in 2924.12(a) & (b) is an invitation for predatory attorney's who actual prey on the vulnerable homeowner at the Homeowners legal expense. And those provisions too are used as threats in an attempt to leverage us toward a favorable decision even though the borrower, or their attorney or third party, is failing to provide the documentation we have requested and/or making promises to provide documentation but never do. Or, in some cases, provide fraudulently documentation that takes extensive time to investigate, as we want to be sure.

The federal bankruptcy laws were never meant to be used as a way to stale or thwart the foreclosure process, but it happens all the time. And we are now starting to see request for Loan Modifications being used in the same manner.

With the actual increase in cost we have already experienced resulting from the HBOR, as well as the uncertain financial impact the HBOR will have on servicing mortgage loans in California, we very well may have to institute the same type of credit overlays that banks have. This measure would be taken in order to avoid the loan characteristic that statistically show a predisposition to the type of problems we have in servicing loans under the requirements and provisions of the HBOR. If that occurs, the "under-served" home loan applicants in California will truly go "un-served", and that would be a travesty.

In closing, I would like to say that I believe First Mortgage is a casualty of war. And that war was, and perhaps still is, between the government and the five signatories of the National Settlement Agreement, as the National Settlement Agreement was relayed upon heavily in forming the HBOR. As stated earlier, we do not originate or service portfolio loans (as do banks), so we never had a problem with reviewing and administering Loss Mitigation for our borrowers as required by HUD, VA, CalHFA and the GSE's.

I would like to deeply thank Chair and Committee members for allowing me this opportunity to express our experience with servicing mortgage loans under requirements of the HBOR. At this time I would like to welcome any questions the Chair or committee members my have for me at this time. And I would also like to welcome any invitation for future follow up discussions as well.

END



CIVIL JUSTICE ASSOCIATION
OF
CALIFORNIA

October 18, 2013

Dear Senate Banking and Financial Institutions Committee:

Thank you for the opportunity to participate in the informational hearing on October 1, 2013 in Orange County about the Homeowners Bill of Rights.

The Civil Justice Association of California has long advocated for government enforcement of rules and regulations, and has been leery of private lawyers using individual lawsuits as a mechanism for enforcement of regulations. When private lawyers, motivated by the prospect of attorney's fees, sue businesses, some of those lawyers use the opportunity to engage in legalized extortion. One only needs to look to the example of ADA access lawsuits or Prop 65 lawsuits to see the damage that can be done by this kind of lawsuit.

With those experiences in mind, we urge the Senate Banking and Financial Institutions Committee to exercise restraint and vigilance. We urge you NOT to expand any individual lawsuit provisions and NOT to expand any attorney's fees provisions. In fact, we are very concerned that the Homeowners Bill of Rights may be interpreted to allow attorney's fees even when they are undeserved. The effort of the legislation was to help distressed homeowners having difficulty making their mortgage payments be considered for foreclosure prevention alternatives. It was not to have sent more cases to court simply delay. Civil Code Sections 2924.12 and 2924.19 countenance a violation of the new requirements as being "material," but there is some concern that this wording may not be specific enough. For example, if an attorney gets a plaintiff homeowner a stay of foreclosure proceedings on technicalities but the homeowner is not entitled to any loan modification and does not receive it, that kind of lawsuit serves only to delay and that plaintiff's lawyer should not be rewarded with attorney's fees.

We would additionally urge you NOT to push non-judicial foreclosures into the realm of civil lawsuits. Non-judicial foreclosures are one relief valve on our congested and under-funded civil courts as well as a fair, effective way to limit the liability of both parties when handling a default in property cases. If non-judicial foreclosures end up being encumbered with lawsuits and the liability in using this means of more foreclosures end up being moved to courts, then their procedural advantages evaporate. California would effectively become a judicial foreclosure state and costs will be passed on to the borrowers and the taxpayers.

Sincerely,

A handwritten signature in black ink that reads "Kim Stone".

Kim Stone
President

cc: Eileen Newhall, Consultant, Senate Banking and Financial Institutions Committee

APPENDIX B

HEARING AGENDA AND BACKGROUND PAPER

MEMBERS
TOM BERRYHILL
VICE CHAIR
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RON CALDERON
JERRY HILL
BEN HUESO
RICHARD ROTH
NORMA TORRES
MIMI WALTERS

California State Senate

SENATE COMMITTEE ON BANKING AND FINANCIAL INSTITUTIONS

SENATOR LOU CORREA
CHAIR



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RAE FLORES

THE HOMEOWNER BILL OF RIGHTS (SB 900/AB 278): AN IMPLEMENTATION UPDATE

INFORMATIONAL HEARING

Tuesday, October 1, 2013

Rancho Santiago Community College District Board Room
2323 North Broadway, Santa Ana, California

9:00 AM – 1:00 PM

- I. Welcome and Opening Remarks – *Chairman Correa*
- II. Economic and Housing Impacts of SB 900 and AB 278
 - A. *Dr. Selma Hepp, Senior Economist, California Association of Realtors*
 - B. *Sean O'Toole, Founder and CEO, Property Radar*
- III. Oversight of HBOR Implementation: A View From the Sponsor's Grantees and California's Primary Lending Regulator
 - A. *Katherine Porter, California Monitor, National Settlement Agreement*
 - B. *Kent Qian, Attorney, National Housing Law Project*
 - C. *John Hanna, General Counsel, Department of Business Oversight*
- IV. How Are Borrowers Fairing: Consumer Perspectives
 - A. *Debra Zimmerman, Staff Attorney, Bet Tzedek Legal Services*
 - B. *Pat Pinto, Staff Attorney, Legal Aid Society of Orange County*
 - C. *Elba Serrano, Senior Housing and Financial Counselor, East LA Community Corporation*
 - D. *Joseph R. Manning, Jr. Attorney at Law, Manning Law, APC*
 - E. *Vince Howard, Howard Law, on behalf of the Consumer Attorneys of California*



V. How Are Lenders and Servicers Fairing: An Industry Perspective

A. Peter Munoz, Partner, Reed Smith LLP

B. Joe Sanders, Managing Director, Servicing Division, First Mortgage Corporation

C. Darren Williams, CEO, Wescom Credit Union

D. Kim Stone, President, Civil Justice Association of California

E. David Haithcock, Executive Director, California Independent Bankers

F. Mike Belote, on behalf of the California Mortgage Association

VI. Public Comment

VII. Closing Remarks and Next Steps – *Chairman Correa*

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California State Senate

SENATE COMMITTEE ON BANKING AND FINANCIAL INSTITUTIONS

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INFORMATIONAL HEARING

THE HOMEOWNER BILL OF RIGHTS (SB 900/AB 278): AN IMPLEMENTATION UPDATE

BACKGROUND PAPER

October 1, 2013

Rancho Santiago Community College District Board Room
2323 North Broadway, Santa Ana, California



INTRODUCTION

In July 2012, the California Legislature passed, and Governor Brown signed, two identical pieces of legislation that became effective January 1, 2013. As discussed in more detail below, AB 278 (Eng et al., Chapter 86, Statutes of 2012) and SB 900 (Leno et al., Chapter 87, Statutes of 2012) – collectively known as the California Homeowner Bill of Rights (HBOR) – enacted comprehensive mortgage loan servicing reforms, established mortgage loan borrower protections, and modified California's nonjudicial foreclosure process.

On October 1, 2013, the California Senate Banking and Financial Institutions Committee will convene an informational hearing to solicit input from a wide variety of interested parties regarding the successes and failures of AB 278 and SB 900 to date. Although the two pieces of legislation have been operative for only nine months (since January 1, 2013), the bills were approved in mid-July 2012, a timeframe that gave borrowers, housing counselors, servicers, their regulators, and multiple other interested parties many months to prepare for their implementation. Furthermore, because the bills were based on elements of a nationwide mortgage settlement agreement reached in March 2012, several of the largest servicers had already begun implementing many of the servicing reforms contained in AB 278 and SB 900 during 2012.

During the hearing, a group of invited witnesses, including economists, California's AG-appointed mortgage monitor, borrower advocates, servicers, regulators, attorneys, and several others will discuss all of the following questions, and more:

- How, if at all, has HBOR impacted the number of foreclosure starts in California? The number of foreclosure sales? Were those impacts temporary or longer-term?
- How, if at all, has HBOR impacted the length of time to nonjudicially foreclose in California? Was that impact temporary or longer-term?
- Has HBOR had other impacts on the California housing market?
- Do borrowers know about their additional rights under HBOR?
- Are borrowers having an easier time communicating constructively with their mortgage servicers since enactment of HBOR? If so, what types of problems have largely gone away since HBOR? If not, what types of problems are continuing?
- Are most servicers aware of HBOR and their responsibilities under it?
- Do servicers clearly understand their responsibilities under HBOR?
- Is HBOR implementation uniform across servicers, or are some servicers doing a better job than others in complying with HBOR?
- Are California regulators, including the AG, bringing actions against servicers for violations of HBOR?
- Are borrowers utilizing the private right of action authorized under HBOR? If so, how have these suits been decided?

- Are third party purchasers who place the highest bid on properties at trustee sales (i.e., foreclosure auctions) being sued by borrowers alleging HBOR violations? If so, how are these suits being decided?
- Are changes to HBOR necessary to achieve its original intent?

BACKGROUND

AB 278 and SB 900 were the culmination of several years of debate within the California Legislature regarding the appropriate response to problems that had plagued California borrowers during the mortgage crisis. For years, borrowers had complained of losing their homes to foreclosure while simultaneously engaging in discussions with their mortgage servicers about loan modifications (a practice that has become known as dual-tracking). Many borrowers also complained of receiving the runaround when they called their servicers to inquire about loan modifications or other forms of mortgage loan forbearance or forgiveness – long hold times ended in disconnections or voicemail boxes that were too full to accept messages; borrowers who got through to a live representative would often have to re-educate servicer personnel about their situations, every time they called; continuity among servicer personnel was limited or nonexistent. Borrower paperwork was repeatedly lost, resulting in the need to submit multiple copies of the same documents; by the time servicers acknowledged receipt of those documents, borrowers were often told that the documents were out of date, and were asked to submit updated copies. Borrowers were verbally offered loan modifications, but never provided with anything in writing. Borrowers would receive a loan modification denial from one department of a servicer, while another department of the servicer assured them that their modification application was still under review. The list of complaints was long, and frustration among borrowers and legislators was high.

On multiple occasions beginning in 2008, both the California Legislature and the federal government took steps to improve borrower-servicer interactions and help borrowers obtain affordable, sustainable loan modifications. However, by early 2012, California's Attorney General (AG), the President Pro Tempore of the State Senate, and the Speaker of the State Assembly agreed that more needed to be done. A six-bill Homeowner Bill of Rights, sponsored by AG Kamala Harris and strongly supported by Speaker Perez and Pro Tem Steinberg, was introduced in February 2012. HBOR, as it came to be known, proposed to restrict dual-tracking, guarantee borrowers a single point of contact in their interactions with servicers, ensure that the information contained in mortgage-related documents was verified before those documents could be recorded, provide additional rights to tenants whose homes were foreclosed upon, help the AG investigate and prosecute mortgage fraud, and provide additional tools to local government with which to curb blight.

Although HBOR was technically comprised of six bills, the two highest-profile bills (AB 278 and SB 900) have become synonymous with the acronym. Both bills will be referred to interchangeably in this background paper as AB 278/SB 900, HBOR, and the conference report (reflecting their final crafting by a two-house legislative conference

committee). Although not discussed in this background paper, the other four bills in the six-bill HBOR package included AB 2610, Skinner, Chapter 562 – tenants' rights; SB 1474, Hancock, Chapter 568 and AB 1950, Davis, Chapter 569 – tools to prosecute mortgage fraud, and AB 2314, Carter, Chapter 201 – tools to curb blight; all Statutes of 2012.

SB 900 AND AB 278: A SUMMARY

A summary of many of the key provisions of AB 278 and SB 900 is included in Appendix A of this report. Actual bill language is included in Appendix B.

Although the bills can be *summarized* fairly simply, the details of AB 278 and SB 900 are somewhat harder to fully explain, because the bills contain four sets of overlapping provisions. Some provisions apply to servicers that foreclose on more than 175 residential real properties per year (a proxy for larger servicers); other provisions apply to servicers that foreclose on 175 or fewer residential real properties per year (a proxy for smaller servicers); some provisions apply during the first five years of the bills' operation (1/1/13 through 12/31/17); other provisions apply on and after January 1, 2018; still other provisions become operative on January 1, 2013 and do not sunset.

Some provisions apply to all servicers, both before and after January 1, 2018; other provisions apply to only larger servicers, for only the first five years of the bills' operative dates; still other provisions apply to small servicers for the first five years of the bills' operation and then to all servicers on and after January 1, 2018.

A guide to understanding which sections of the bill apply to which groups of servicers, over what time period, is included in Appendix C.

CONTEXT

The October 1st informational hearing will focus on implementation of AB 278 and SB 900. However, both of those bills must be considered in the context of several other sets of servicing reforms, which were enacted a short time prior to and a short time following enactment of AB 278 and SB 900. Two separate settlement agreements, both reached during 2012, formed the basis for several of the bills' requirements. In January 2014, new nationwide servicing rules promulgated by the Consumer Financial Protection Bureau (CFPB) will become operative. The nationwide settlement agreement, the new nationwide servicing rules, and HBOR all attempt to improve borrower-servicer interactions through the establishment of several servicing reforms. Yet, because all three sets of requirements differ somewhat, but apply simultaneously, HBOR must be considered in the context of the other rules.

The National Mortgage Settlement

The first of two settlement agreements relevant to HBOR is the 49-state nationwide mortgage settlement reached on March 12, 2012 between the U.S. Department of

Justice, U.S. Department of Housing and Urban Development, and 49 state Attorneys General, including AG Harris, with the nation's five largest mortgage servicers (Bank of America, Citi, JPMorgan Chase, Wells Fargo, and Ally/GMAC). All of the settlement documents can be accessed at www.nationalmortgagesettlement.com.

Each of the five consent judgments entered into as part of the national mortgage settlement (one for each of the five servicers) contain several parts, many of which are identical among all five servicers, and some of which vary from servicer to servicer. Three elements of the judgments that are identical across all servicers include the settlement term sheet (a 41-page document that formed the basis for many of the provisions of AB 278 and SB 900, and which was relied upon heavily by the members of the conference committee that drafted the bills), the settlement enforcement provisions, and the releases from prosecution that were granted to the servicers by the federal government and the states that signed on to the agreement.

Other key elements of the judgments that vary from servicer to servicer include discussions of how much money each of the servicers must pay in connection with the settlement, how that money is allocated among states, how credit toward servicers' monetary obligations is calculated under the settlement (different types of consumer relief count differently toward servicers' monetary obligations), and how servicemembers and their dependents are covered by the settlement.

In addition to the settlement term sheet referenced above, the monetary payments received by California from the five servicers covered by the national mortgage settlement have also proved important to HBOR implementation. California received \$411 million in direct payments from the five signatories to the nationwide settlement. Of this amount, the AG's office received \$10.4 million to fund programs designed to aid California families impacted by the foreclosure process, and additional funding to support the position of California settlement monitor.

The \$10.4 million allocation funded two types of grants issued by the AG's office: a Homeowner Bill of Rights Implementation grant (approximately \$1 million in funding) and community assistance grants (approximately \$9.4 million in funding).

In March 2013, the National Housing Law Project (NHLP) was awarded a \$1 million grant to study implementation of HBOR. Kent Qian, one of the attorneys employed by NHLP who is tasked with tracking HBOR litigation, will testify during the informational hearing about the amount, types, and outcomes of HBOR litigation his organization is tracking.

In April 2013, the AG's office awarded twenty-one housing counseling organizations a total of \$9.4 million to provide or expand access to some or all of the following: free legal assistance and representation, foreclosure intervention aid, homeowner education and financial literacy clinics, blight remediation services, fraud prevention education, and employment support services. A list of the organizations that were awarded community assistance grants by the AG's office is included in Appendix D. Several

representatives from these grant recipients have also agreed to testify during the informational hearing, and will discuss how the receipt of that grant money is impacting their ability to serve the borrowers who seek their assistance.

The California Side Agreement

At roughly the same time the national mortgage settlement agreement was announced, AG Harris announced that she had reached a separate agreement with three of the signatories to the national settlement agreement (Bank of America, JPMorgan Chase, and Wells Fargo). The side agreement guaranteed that those servicers would provide, in the aggregate, a minimum of \$12 billion of aid to California homeowners through a combination of first and second lien principal reduction, second lien forgiveness, and short sale approval. Credit for these activities is provided on a dollar for dollar basis (unlike the complicated formulas used under the nationwide settlement agreement to credit borrower relief), with extra credit available for providing relief during the first year of the agreement and for providing relief in the twelve counties in California that were hardest hit by the foreclosure crisis.

In March 2012, AG Harris announced that she has appointed Irvine Law Professor Katherine Porter to monitor the commitment of those three banks under California's side agreement and the commitment of all five banks under the national settlement agreement. Significant information and borrower resources, including four progress reports issued by Professor Porter, are available at the California Monitor web site (www.camonitor.org). Professor Porter will be addressing the committee during the informational hearing, to summarize the performance of servicers under the settlement agreements (both national and California-specific), discuss the interaction of HBOR with those agreements, and offer her thoughts on the next steps that should be taken by California to address the problems facing California borrowers.

Nationwide Servicing Standards

On January 17, 2013, the CFPB issued final nationwide mortgage servicing rules via amendments to the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z). These final rules were subsequently amended on September 13, 2013. Text of the final rules and a summary of the comments received by the CFPB via their rulemaking process can be accessed at <http://www.consumerfinance.gov/regulations/>. The new nationwide mortgage servicing requirements are operative January 1, 2014.

The table in Appendix E compares and contrasts the requirements of AB 278/SB 900 with the requirements of the nationwide servicing standards, where the two sets of rules overlap in coverage (as they do in many, but not all, areas). These inconsistencies may result in confusion among both borrowers and servicers, once both sets of rules are operative, another topic that is likely to be addressed by some of the invited witnesses.

NEXT STEPS

A final report summarizing witness testimony and reviewing recommendations that flow from the hearing will be prepared by Committee staff in the weeks following the conclusion of the hearing.

APPENDIX A

SUMMARY OF THE HOMEOWNER BILL OF RIGHTS

HOMEOWNER BILL OF RIGHTS SUMMARY

AB 278 (Eng, Feuer, Mitchell, Pérez), Chapter 86, Statutes of 2012
SB 900 (Leno, Corbett, DeSaulnier, Evans, Pavley, Steinberg), Chapter 87, Statutes of 2012

Scope: First lien mortgages secured by owner-occupied principal residences with one to four dwelling units.

Duration: Some provisions apply only during the first five years of the legislation (1/1/13 through 12/31/17). Some provisions apply beginning on 1/1/13 and do not sunset. Some provisions apply beginning on 1/1/18.

Distinction between smaller servicers and larger servicers: The bills distinguish between servicers that foreclose on 175 or fewer, one-to-four unit residential real properties in California during the prior year (a proxy for smaller-sized servicers) and servicers that foreclose on more than 175 one-to-four unit residential real properties in California during the prior year (a proxy for larger-sized servicers).

Remedies: Private rights of action are authorized for material violations of the bills that go uncorrected by a servicer. Borrowers may bring actions for injunctive relief prior to the completion of a foreclosure (trustee's) sale, and for actual economic damages following a trustee's sale. Successful appellants are also entitled to reasonable attorney's fees and costs.

REQUIREMENTS APPLICABLE TO ALL SERVICERS

Prohibition against recording a notice of default (NOD): Servicers may not record a NOD until at least 30 days after initial contact is made with a borrower to discuss options for avoiding foreclosure or 30 days after satisfying due diligence requirements to establish contact. (No sunset)

Continuity following transfer of servicing rights: If a borrower is approved in writing for a first lien loan modification or other foreclosure prevention alternative, and the servicing of the borrower's loan is transferred or sold to another mortgage servicer, the subsequent servicer must continue to honor any previously approved first lien loan modification or other foreclosure prevention alternative. (1/1/13 through 12/31/17)

Review of recorded documents: Before recording any one of several different types of documents that are required in the context of nonjudicial foreclosures, servicers must ensure that they have reviewed competent and reliable evidence to substantiate the borrower's default and the servicer's right to foreclose. Any of these documents that are recorded by or on behalf of a mortgage servicer must be accurate and complete and supported by competent and reliable evidence. (No sunset). From 1/1/13 through 12/31/17, servicers who engage in multiple and repeated, uncorrected violations of this provision are liable for civil penalties of up to \$7,500 per mortgage or deed of trust, in an action that may be brought only by the Attorney General or another governmental prosecutor or by a specified state regulator through an administrative proceeding. On and after 1/1/18, this provision is enforceable via the private right of action summarized above under "Remedies."

HOMEOWNER BILL OF RIGHTS SUMMARY

AB 278 (Eng, Feuer, Mitchell, Pérez), Chapter 86, Statutes of 2012
SB 900 (Leno, Corbett, DeSaulnier, Evans, Pavley, Steinberg), Chapter 87, Statutes of 2012

ADDITIONAL REQUIREMENTS APPLICABLE TO SMALLER SERVICERS

Cessation of the foreclosure process, once a complete mortgage loan modification application is submitted: Once a borrower submits a complete first lien loan modification application, the servicer may not take the next step in the foreclosure process while that application is pending, or until the borrower has been provided with a written determination regarding his or her application. Once a foreclosure prevention alternative has been approved in writing, the servicer may not take the next step in the foreclosure process while: 1) the borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan; or 2) a foreclosure prevention alternative has been approved in writing by all parties, and proof of funds or financing has been provided to the servicer. (No sunset)

ADDITIONAL REQUIREMENTS APPLICABLE TO LARGER SERVICERS

Written notice required pre-NOD: Servicers must send all of the following to delinquent borrowers in writing, before recording a NOD: 1) a statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the Servicemembers Civil Relief Act; 2) a statement that the borrower may request a copy of his or her promissory note or other evidence of indebtedness, a copy of their deed of trust or mortgage, a copy of any assignment of their mortgage or deed of trust required to demonstrate the servicer's right to foreclose, and a copy of the borrower's payment history since they were last less than 60 days past due; and 3) HUD's toll-free telephone number to identify housing counseling agencies near the borrower. (1/1/13 through 12/31/17)

Written notice required post-NOD: Unless a borrower has previously exhausted the first lien loan modification process, servicers that offer one or more foreclosure prevention alternatives must send the following to the borrower in writing, within five business days after recording a NOD: 1) a statement that the borrower may still be evaluated for one or more alternatives to foreclosure; 2) a statement informing the borrower whether an application is required to be considered for this alternative/these alternatives; and 3) information on the means and process by which a borrower may obtain an application, if one is required. (1/1/13 through 12/31/17)

Written notification required when a first lien loan modification application is submitted: When any document in connection with a first lien loan modification application is submitted, the servicer must acknowledge receipt of that document within five business days. (1/1/13 through 12/31/17)

Single Point of Contact (SPOC): Servicers must assign a SPOC upon request from any borrower who requests a foreclosure prevention alternative. The SPOC is either an individual or a team of personnel, each of whom has the ability and authority to undertake several responsibilities, which are detailed in SB 900 and AB 278, and each

HOMEOWNER BILL OF RIGHTS SUMMARY

AB 278 (Eng, Feuer, Mitchell, Pérez), Chapter 86, Statutes of 2012
SB 900 (Leno, Corbett, DeSaulnier, Evans, Pavley, Steinberg), Chapter 87, Statutes of 2012

of whom is knowledgeable about the borrower's situation and current status in the loss mitigation process. The requirement to offer a SPOC concludes when the servicer determines that all loss mitigation options offered by or through that servicer have been exhausted, or when the borrower's account becomes current. *(No sunset)*

Cessation of the foreclosure process, once a complete mortgage loan modification application is submitted: Once a borrower submits a complete first lien loan modification application, the servicer may not take the next step in the foreclosure process while that application is pending, or until one of the following occurs: 1) the servicer makes a determination that the borrower is ineligible for a modification, and any appeal period has expired; 2) the borrower does not accept an offered loan modification within 14 days of the servicer's offer; or 3) the borrower accepts the offered modification, but defaults on or otherwise breaches his or her obligation under the loan modification agreement. *(No sunset, although this provision becomes somewhat less prescriptive beginning on 1/1/18)*

Written notice of denial required: If a borrower's first lien loan modification application is denied, the servicer must send a written notice of denial to the borrower, identifying the reasons for denial with specificity and informing the borrower how to appeal the denial, including the date by which the appeal must be submitted. *(No sunset, although the specific information that must be provided in the denial letter changes somewhat beginning on 1/1/18)*

Delay following a written denial: If a borrower's application for a first lien loan modification is denied, the servicer may not take the next step in the foreclosure process, until 31 days after the borrower is notified in writing of his or her denial. Additional time must be provided to borrowers who appeal their denials. *(1/1/13 through 12/31/17)*

APPENDIX B

TEXT OF THE HOMEOWNER BILL OF RIGHTS
(Because SB 900 and AB 278 are identical,
only SB 900 is included in this Appendix)

Senate Bill No. 900

CHAPTER 87

An act to amend and add Sections 2923.5 and 2923.6 of, to amend and repeal Section 2924 of, to add Sections 2920.5, 2923.4, 2923.7, 2924.17, and 2924.20 to, to add and repeal Sections 2923.55, 2924.9, 2924.10, 2924.18, and 2924.19 of, and to add, repeal, and add Sections 2924.11, 2924.12, and 2924.15 of, the Civil Code, relating to mortgages.

[Approved by Governor July 11, 2012. Filed with
Secretary of State July 11, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 900, Leno. Mortgages and deeds of trust: foreclosure.

(1) Existing law, until January 1, 2013, requires a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower prior to filing a notice of default to explore options for the borrower to avoid foreclosure, as specified. Existing law requires a notice of default or, in certain circumstances, a notice of sale, to include a declaration stating that the mortgagee, trustee, beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower, or that no contact was required for a specified reason.

This bill would add mortgage servicers, as defined, to these provisions and would extend the operation of these provisions indefinitely, except that it would delete the requirement with respect to a notice of sale. The bill would, until January 1, 2018, additionally require the borrower, as defined, to be provided with specified information in writing prior to recordation of a notice of default and, in certain circumstances, within 5 business days after recordation. The bill would prohibit a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent from recording a notice of default or, until January 1, 2018, recording a notice of sale or conducting a trustee's sale while a complete first lien loan modification application is pending, under specified conditions. The bill would, until January 1, 2018, establish additional procedures to be followed regarding a first lien loan modification application, the denial of an application, and a borrower's right to appeal a denial.

(2) Existing law imposes various requirements that must be satisfied prior to exercising a power of sale under a mortgage or deed of trust, including, among other things, recording a notice of default and a notice of sale.

The bill would, until January 1, 2018, require a written notice to the borrower after the postponement of a foreclosure sale in order to advise the borrower of any new sale date and time, as specified. The bill would provide that an entity shall not record a notice of default or otherwise initiate the

foreclosure process unless it is the holder of the beneficial interest under the deed of trust, the original or substituted trustee, or the designated agent of the holder of the beneficial interest, as specified.

The bill would prohibit recordation of a notice of default or a notice of sale or the conduct of a trustee's sale if a foreclosure prevention alternative has been approved and certain conditions exist and would, until January 1, 2018, require recordation of a rescission of those notices upon execution of a permanent foreclosure prevention alternative. The bill would until January 1, 2018, prohibit the collection of application fees and the collection of late fees while a foreclosure prevention alternative is being considered, if certain criteria are met, and would require a subsequent mortgage servicer to honor any previously approved foreclosure prevention alternative.

The bill would authorize a borrower to seek an injunction and damages for violations of certain of the provisions described above, except as specified. The bill would authorize the greater of treble actual damages or \$50,000 in statutory damages if a violation of certain provisions is found to be intentional or reckless or resulted from willful misconduct, as specified. The bill would authorize the awarding of attorneys' fees for prevailing borrowers, as specified. Violations of these provisions by licensees of the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate would also be violations of those respective licensing laws. Because a violation of certain of those licensing laws is a crime, the bill would impose a state-mandated local program.

The bill would provide that the requirements imposed on mortgage servicers, and mortgagees, trustees, beneficiaries, and authorized agents, described above are applicable only to mortgages or deeds of trust secured by residential real property not exceeding 4 dwelling units that is owner-occupied, as defined, and, until January 1, 2018, only to those entities who conduct more than 175 foreclosure sales per year or annual reporting period, except as specified.

The bill would require, upon request from a borrower who requests a foreclosure prevention alternative, a mortgage servicer who conducts more than 175 foreclosure sales per year or annual reporting period to establish a single point of contact and provide the borrower with one or more direct means of communication with the single point of contact. The bill would specify various responsibilities of the single point of contact. The bill would define single point of contact for these purposes.

(3) Existing law prescribes documents that may be recorded or filed in court.

This bill would require that a specified declaration, notice of default, notice of sale, deed of trust, assignment of a deed of trust, substitution of trustee, or declaration or affidavit filed in any court relative to a foreclosure proceeding or recorded by or on behalf of a mortgage servicer shall be accurate and complete and supported by competent and reliable evidence. The bill would require that, before recording or filing any of those documents, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to

foreclose, including the borrower's loan status and loan information. The bill would, until January 1, 2018, provide that any mortgage servicer that engages in multiple and repeated violations of these requirements shall be liable for a civil penalty of up to \$7,500 per mortgage or deed of trust, in an action brought by specified state and local government entities, and would also authorize administrative enforcement against licensees of the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate.

The bill would authorize the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate to adopt regulations applicable to persons and entities under their respective jurisdictions for purposes of the provisions described above. The bill would provide that a violation of those regulations would be enforceable only by the regulating agency.

(4) The bill would state findings and declarations of the Legislature in relation to foreclosures in the state generally, and would state the purposes of the bill.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) California is still reeling from the economic impacts of a wave of residential property foreclosures that began in 2007. From 2007 to 2011 alone, there were over 900,000 completed foreclosure sales. In 2011, 38 of the top 100 hardest hit ZIP Codes in the nation were in California, and the current wave of foreclosures continues apace. All of this foreclosure activity has adversely affected property values and resulted in less money for schools, public safety, and other public services. In addition, according to the Urban Institute, every foreclosure imposes significant costs on local governments, including an estimated nineteen thousand two hundred twenty-nine dollars (\$19,229) in local government costs. And the foreclosure crisis is not over; there remain more than two million "underwater" mortgages in California.

(b) It is essential to the economic health of this state to mitigate the negative effects on the state and local economies and the housing market that are the result of continued foreclosures by modifying the foreclosure process to ensure that borrowers who may qualify for a foreclosure alternative are considered for, and have a meaningful opportunity to obtain, available loss mitigation options. These changes to the state's foreclosure process are essential to ensure that the current crisis is not worsened by unnecessarily adding foreclosed properties to the market when an alternative to foreclosure may be available. Avoiding foreclosure, where possible, will

help stabilize the state's housing market and avoid the substantial, corresponding negative effects of foreclosures on families, communities, and the state and local economy.

(c) This act is necessary to provide stability to California's statewide and regional economies and housing market by facilitating opportunities for borrowers to pursue loss mitigation options.

SEC. 2. Section 2920.5 is added to the Civil Code, to read:

2920.5. For purposes of this article, the following definitions apply:

(a) "Mortgage servicer" means a person or entity who directly services a loan, or who is responsible for interacting with the borrower, managing the loan account on a daily basis including collecting and crediting periodic loan payments, managing any escrow account, or enforcing the note and security instrument, either as the current owner of the promissory note or as the current owner's authorized agent. "Mortgage servicer" also means a subservicing agent to a master servicer by contract. "Mortgage servicer" shall not include a trustee, or a trustee's authorized agent, acting under a power of sale pursuant to a deed of trust.

(b) "Foreclosure prevention alternative" means a first lien loan modification or another available loss mitigation option.

(c) (1) Unless otherwise provided and for purposes of Sections 2923.4, 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, 2924.18, and 2924.19, "borrower" means any natural person who is a mortgagor or trustor and who is potentially eligible for any federal, state, or proprietary foreclosure prevention alternative program offered by, or through, his or her mortgage servicer.

(2) For purposes of the sections listed in paragraph (1), "borrower" shall not include any of the following:

(A) An individual who has surrendered the secured property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.

(B) An individual who has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

(C) An individual who has filed a case under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case, or granting relief from a stay of foreclosure.

(d) "First lien" means the most senior mortgage or deed of trust on the property that is the subject of the notice of default or notice of sale.

SEC. 3. Section 2923.4 is added to the Civil Code, to read:

2923.4. (a) The purpose of the act that added this section is to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower's mortgage servicer, such as loan modifications or other alternatives to foreclosure. Nothing in

the act that added this section, however, shall be interpreted to require a particular result of that process.

(b) Nothing in this article obviates or supersedes the obligations of the signatories to the consent judgment entered in the case entitled United States of America et al. v. Bank of America Corporation et al., filed in the United States District Court for the District of Columbia, case number 1:12-cv-00361 RMC.

SEC. 4. Section 2923.5 of the Civil Code is amended to read:

2923.5. (a) (1) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to Section 2924 until both of the following:

(A) Either 30 days after initial contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (e).

(B) The mortgage servicer complies with paragraph (1) of subdivision (a) of Section 2924.18, if the borrower has provided a complete application as defined in subdivision (d) of Section 2924.18.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.

(c) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(d) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (a). Any loan modification or workout plan offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(e) A notice of default may be recorded pursuant to Section 2924 when a mortgage servicer has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the borrower

occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgage servicer.

(C) A mortgage servicer satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested.

(4) The mortgage servicer 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.

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) 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 those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(f) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(g) This section shall apply only to entities described in subdivision (b) of Section 2924.18.

(h) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 5. Section 2923.5 is added to the Civil Code, to read:

2923.5. (a) (1) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to Section 2924 until both of the following:

(A) Either 30 days after initial contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (e).

(B) The mortgage servicer complies with subdivision (a) of Section 2924.11, if the borrower has provided a complete application as defined in subdivision (f) of Section 2924.11.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.

(c) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(d) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (a). Any loan modification or workout plan offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(e) A notice of default may be recorded pursuant to Section 2924 when a mortgage servicer has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is

answered, the call is connected to a live representative of the mortgage servicer.

(C) A mortgage servicer satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested.

(4) The mortgage servicer 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.

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) 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 those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(f) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(g) This section shall become operative on January 1, 2018.

SEC. 6. Section 2923.55 is added to the Civil Code, to read:

2923.55. (a) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to Section 2924 until all of the following:

(1) The mortgage servicer has satisfied the requirements of paragraph (1) of subdivision (b).

(2) Either 30 days after initial contact is made as required by paragraph (2) of subdivision (b) or 30 days after satisfying the due diligence requirements as described in subdivision (f).

(3) The mortgage servicer complies with subdivision (c) of Section 2923.6, if the borrower has provided a complete application as defined in subdivision (h) of Section 2923.6.

(b) (1) As specified in subdivision (a), a mortgage servicer shall send the following information in writing to the borrower:

(A) A statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the federal Servicemembers Civil Relief Act (50 U.S.C. Sec. 501 et seq.) regarding the servicemember's interest rate and the risk of foreclosure, and counseling for covered servicemembers that is available at agencies such as Military OneSource and Armed Forces Legal Assistance.

(B) A statement that the borrower may request the following:

(i) A copy of the borrower's promissory note or other evidence of indebtedness.

(ii) A copy of the borrower's deed of trust or mortgage.

(iii) A copy of any assignment, if applicable, of the borrower's mortgage or deed of trust required to demonstrate the right of the mortgage servicer to foreclose.

(iv) A copy of the borrower's payment history since the borrower was last less than 60 days past due.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(c) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.

(d) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(e) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (b). Any foreclosure prevention alternative offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(f) A notice of default may be recorded pursuant to Section 2924 when a mortgage servicer has not contacted a borrower as required by paragraph (2) of subdivision (b), provided that the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours

and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgage servicer.

(C) A mortgage servicer satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested, that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(4) The mortgage servicer 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.

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) 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 those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(g) This section shall not apply to entities described in subdivision (b) of Section 2924.18.

(h) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(i) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 7. Section 2923.6 of the Civil Code is amended to read:

2923.6. (a) The Legislature finds and declares that any duty that mortgage servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, or to all investors under a pooling and servicing agreement, not to any particular party in the loan pool or investor under a pooling and servicing agreement, and that a mortgage servicer acts in the best interests of all parties to the loan pool or investors in the pooling and servicing agreement if it agrees to or implements a loan modification or workout plan for which both of the following apply:

(1) The loan is in payment default, or payment default is reasonably foreseeable.

(2) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(b) It is the intent of the Legislature that the mortgage servicer offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.

(c) If a borrower submits a complete application for a first lien loan modification offered by, or through, the borrower's mortgage servicer, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default or notice of sale, or conduct a trustee's sale, while the complete first lien loan modification application is pending. A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default or notice of sale or conduct a trustee's sale until any of the following occurs:

(1) The mortgage servicer makes a written determination that the borrower is not eligible for a first lien loan modification, and any appeal period pursuant to subdivision (d) has expired.

(2) The borrower does not accept an offered first lien loan modification within 14 days of the offer.

(3) The borrower accepts a written first lien loan modification, but defaults on, or otherwise breaches the borrower's obligations under, the first lien loan modification.

(d) If the borrower's application for a first lien loan modification is denied, the borrower shall have at least 30 days from the date of the written denial to appeal the denial and to provide evidence that the mortgage servicer's determination was in error.

(e) If the borrower's application for a first lien loan modification is denied, the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default or, if a notice of default has already been recorded, record a notice of sale or conduct a trustee's sale until the later of:

(1) Thirty-one days after the borrower is notified in writing of the denial.

(2) If the borrower appeals the denial pursuant to subdivision (d), the later of 15 days after the denial of the appeal or 14 days after a first lien loan modification is offered after appeal but declined by the borrower, or, if a first lien loan modification is offered and accepted after appeal, the date on which the borrower fails to timely submit the first payment or otherwise breaches the terms of the offer.

(f) Following the denial of a first lien loan modification application, the mortgage servicer shall send a written notice to the borrower identifying the reasons for denial, including the following:

(1) The amount of time from the date of the denial letter in which the borrower may request an appeal of the denial of the first lien loan modification and instructions regarding how to appeal the denial.

(2) If the denial was based on investor disallowance, the specific reasons for the investor disallowance.

(3) If the denial is the result of a net present value calculation, the monthly gross income and property value used to calculate the net present value and a statement that the borrower may obtain all of the inputs used in the net present value calculation upon written request to the mortgage servicer.

(4) If applicable, a finding that the borrower was previously offered a first lien loan modification and failed to successfully make payments under the terms of the modified loan.

(5) If applicable, a description of other foreclosure prevention alternatives for which the borrower may be eligible, and a list of the steps the borrower must take in order to be considered for those options. If the mortgage servicer has already approved the borrower for another foreclosure prevention alternative, information necessary to complete the foreclosure prevention alternative.

(g) In order to minimize the risk of borrowers submitting multiple applications for first lien loan modifications for the purpose of delay, the mortgage servicer shall not be obligated to evaluate applications from borrowers who have already been evaluated or afforded a fair opportunity to be evaluated for a first lien loan modification prior to January 1, 2013, or who have been evaluated or afforded a fair opportunity to be evaluated consistent with the requirements of this section, unless there has been a material change in the borrower's financial circumstances since the date of the borrower's previous application and that change is documented by the borrower and submitted to the mortgage servicer.

(h) For purposes of this section, an application shall be deemed "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.

(i) Subdivisions (c) to (h), inclusive, shall not apply to entities described in subdivision (b) of Section 2924.18.

(j) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(k) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 8. Section 2923.6 is added to the Civil Code, to read:

2923.6. (a) The Legislature finds and declares that any duty mortgage servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, or to all investors under a pooling and servicing agreement, not to any particular party in the loan pool or investor under a pooling and servicing agreement, and that a mortgage servicer acts in the best interests of all parties to the loan pool or investors in the pooling and servicing agreement if it agrees to or implements a loan modification or workout plan for which both of the following apply:

(1) The loan is in payment default, or payment default is reasonably foreseeable.

(2) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(b) It is the intent of the Legislature that the mortgage servicer offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.

(c) This section shall become operative on January 1, 2018.

SEC. 9. Section 2923.7 is added to the Civil Code, to read:

2923.7. (a) Upon request from a borrower who requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact and provide to the borrower one or more direct means of communication with the single point of contact.

(b) The single point of contact shall be responsible for doing all of the following:

(1) Communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submissions to be considered for these options.

(2) Coordinating receipt of all documents associated with available foreclosure prevention alternatives and notifying the borrower of any missing documents necessary to complete the application.

(3) Having access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower of the current status of the foreclosure prevention alternative.

(4) Ensuring that a borrower is considered for all foreclosure prevention alternatives offered by, or through, the mortgage servicer, if any.

(5) Having access to individuals with the ability and authority to stop foreclosure proceedings when necessary.

(c) The single point of contact shall remain assigned to the borrower's account until the mortgage servicer determines that all loss mitigation options offered by, or through, the mortgage servicer have been exhausted or the borrower's account becomes current.

(d) The mortgage servicer shall ensure that a single point of contact refers and transfers a borrower to an appropriate supervisor upon request of the borrower, if the single point of contact has a supervisor.

(e) For purposes of this section, "single point of contact" means an individual or team of personnel each of whom has the ability and authority to perform the responsibilities described in subdivisions (b) to (d), inclusive. The mortgage servicer shall ensure that each member of the team is knowledgeable about the borrower's situation and current status in the alternatives to foreclosure process.

(f) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(g) (1) This section shall not apply to a depository institution chartered under state or federal law, a person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code, or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and

Professions Code, that, during its immediately preceding annual reporting period, as established with its primary regulator, foreclosed on 175 or fewer residential real properties, containing no more than four dwelling units, that are located in California.

(2) Within three months after the close of any calendar year or annual reporting period as established with its primary regulator during which an entity or person described in paragraph (1) exceeds the threshold of 175 specified in paragraph (1), that entity shall notify its primary regulator, in a manner acceptable to its primary regulator, and any mortgagor or trustor who is delinquent on a residential mortgage loan serviced by that entity of the date on which that entity will be subject to this section, which date shall be the first day of the first month that is six months after the close of the calendar year or annual reporting period during which that entity exceeded the threshold.

SEC. 10. Section 2924 of the Civil Code, as amended by Section 1 of Chapter 180 of the Statutes of 2010, is amended to read:

2924. (a) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until all of the following apply:

(1) The trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default. That notice of default shall include all of the following:

(A) A statement identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property.

(B) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred.

(C) A statement setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default.

(D) If the default is curable pursuant to Section 2924c, the statement specified in paragraph (1) of subdivision (b) of Section 2924c.

(2) Not less than three months shall elapse from the filing of the notice of default.

(3) Except as provided in paragraph (4), after the lapse of the three months described in paragraph (2), the mortgagee, trustee, or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.

(4) Notwithstanding paragraph (3), the mortgagee, trustee, or other person authorized to take sale may record a notice of sale pursuant to Section 2924f up to five days before the lapse of the three-month period described in paragraph (2), provided that the date of sale is no earlier than three months and 20 days after the recording of the notice of default.

(5) Until January 1, 2018, whenever a sale is postponed for a period of at least 10 business days pursuant to Section 2924g, a mortgagee, beneficiary, or authorized agent shall provide written notice to a borrower regarding the new sale date and time, within five business days following the postponement. Information provided pursuant to this paragraph shall not constitute the public declaration required by subdivision (d) of Section 2924g. Failure to comply with this paragraph shall not invalidate any sale that would otherwise be valid under Section 2924f. This paragraph shall be inoperative on January 1, 2018.

(6) No entity shall record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest. No agent of the holder of the beneficial interest under the mortgage or deed of trust, original trustee or substituted trustee under the deed of trust may record a notice of default or otherwise commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest.

(b) In performing acts required by this article, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage. In performing the acts required by this article, a trustee shall not be subject to Title 1.6c (commencing with Section 1788) of Part 4.

(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(d) All of the following shall constitute privileged communications pursuant to Section 47:

(1) The mailing, publication, and delivery of notices as required by this section.

(2) Performance of the procedures set forth in this article.

(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.080 of the Code of Civil Procedure.

(e) There is a rebuttable presumption that the beneficiary actually knew of all unpaid loan payments on the obligation owed to the beneficiary and secured by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default shall not invalidate the notice of sale and the beneficiary shall not be precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

SEC. 11. Section 2924 of the Civil Code, as amended by Section 2 of Chapter 180 of the Statutes of 2010, is repealed.

SEC. 12. Section 2924.9 is added to the Civil Code, to read:

2924.9. (a) Unless a borrower has previously exhausted the first lien loan modification process offered by, or through, his or her mortgage servicer described in Section 2923.6, within five business days after recording a notice of default pursuant to Section 2924, a mortgage servicer that offers one or more foreclosure prevention alternatives shall send a written communication to the borrower that includes all of the following information:

(1) That the borrower may be evaluated for a foreclosure prevention alternative or, if applicable, foreclosure prevention alternatives.

(2) Whether an application is required to be submitted by the borrower in order to be considered for a foreclosure prevention alternative.

(3) The means and process by which a borrower may obtain an application for a foreclosure prevention alternative.

(b) This section shall not apply to entities described in subdivision (b) of Section 2924.18.

(c) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 13. Section 2924.10 is added to the Civil Code, to read:

2924.10. (a) When a borrower submits a complete first lien modification application or any document in connection with a first lien modification application, the mortgage servicer shall provide written acknowledgment of the receipt of the documentation within five business days of receipt. In its initial acknowledgment of receipt of the loan modification application, the mortgage servicer shall include the following information:

(1) A description of the loan modification process, including an estimate of when a decision on the loan modification will be made after a complete application has been submitted by the borrower and the length of time the borrower will have to consider an offer of a loan modification or other foreclosure prevention alternative.

(2) Any deadlines, including deadlines to submit missing documentation, that would affect the processing of a first lien loan modification application.

(3) Any expiration dates for submitted documents.

(4) Any deficiency in the borrower's first lien loan modification application.

(b) For purposes of this section, a borrower's first lien loan modification application shall be deemed to be "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.

(c) This section shall not apply to entities described in subdivision (b) of Section 2924.18.

(d) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(e) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 14. Section 2924.11 is added to the Civil Code, to read:

2924.11. (a) If a foreclosure prevention alternative is approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default under either of the following circumstances:

(1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.

(2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder, and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

(b) If a foreclosure prevention alternative is approved in writing after the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale or conduct a trustee's sale under either of the following circumstances:

(1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.

(2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder, and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

(c) When a borrower accepts an offered first lien loan modification or other foreclosure prevention alternative, the mortgage servicer shall provide the borrower with a copy of the fully executed loan modification agreement or agreement evidencing the foreclosure prevention alternative following receipt of the executed copy from the borrower.

(d) A mortgagee, beneficiary, or authorized agent shall record a rescission of a notice of default or cancel a pending trustee's sale, if applicable, upon the borrower executing a permanent foreclosure prevention alternative. In the case of a short sale, the rescission or cancellation of the pending trustee's sale shall occur when the short sale has been approved by all parties and

proof of funds or financing has been provided to the mortgagee, beneficiary, or authorized agent.

(e) The mortgage servicer shall not charge any application, processing, or other fee for a first lien loan modification or other foreclosure prevention alternative.

(f) The mortgage servicer shall not collect any late fees for periods during which a complete first lien loan modification application is under consideration or a denial is being appealed, the borrower is making timely modification payments, or a foreclosure prevention alternative is being evaluated or exercised.

(g) If a borrower has been approved in writing for a first lien loan modification or other foreclosure prevention alternative, and the servicing of that borrower's loan is transferred or sold to another mortgage servicer, the subsequent mortgage servicer shall continue to honor any previously approved first lien loan modification or other foreclosure prevention alternative, in accordance with the provisions of the act that added this section.

(h) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(i) This section shall not apply to entities described in subdivision (b) of Section 2924.18.

(j) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 15. Section 2924.11 is added to the Civil Code, to read:

2924.11. (a) If a borrower submits a complete application for a foreclosure prevention alternative offered by, or through, the borrower's mortgage servicer, a mortgage servicer, trustee, mortgagee, beneficiary, or authorized agent shall not record a notice of sale or conduct a trustee's sale while the complete foreclosure prevention alternative application is pending, and until the borrower has been provided with a written determination by the mortgage servicer regarding that borrower's eligibility for the requested foreclosure prevention alternative.

(b) Following the denial of a first lien loan modification application, the mortgage servicer shall send a written notice to the borrower identifying with specificity the reasons for the denial and shall include a statement that the borrower may obtain additional documentation supporting the denial decision upon written request to the mortgage servicer.

(c) If a foreclosure prevention alternative is approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default under either of the following circumstances:

(1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.

(2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder,

and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

(d) If a foreclosure prevention alternative is approved in writing after the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale or conduct a trustee's sale under either of the following circumstances:

(1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.

(2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder, and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

(e) This section applies only to mortgages or deeds of trust as described in Section 2924.15.

(f) For purposes of this section, an application shall be deemed "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.

(g) This section shall become operative on January 1, 2018.

SEC. 16. Section 2924.12 is added to the Civil Code, to read:

2924.12. (a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.

(2) Any injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 by that mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(c) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to the recordation of a trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of a trustee's deed upon sale.

(d) A violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 by a person licensed by the Department of Corporations, Department of Financial Institutions, or Department of Real Estate shall be deemed to be a violation of that person's licensing law.

(e) No violation of this article shall affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) A signatory to a consent judgment entered in the case entitled United States of America et al. v. Bank of America Corporation et al., filed in the United States District Court for the District of Columbia, case number 1:12-cv-00361 RMC, that is in compliance with the relevant terms of the Settlement Term Sheet of that consent judgment with respect to the borrower who brought an action pursuant to this section while the consent judgment is in effect shall have no liability for a violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.

(h) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(i) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or was awarded damages pursuant to this section.

(j) This section shall not apply to entities described in subdivision (b) of Section 2924.18.

(k) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 17. Section 2924.12 is added to the Civil Code, to read:

2924.12. (a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.5, 2923.7, 2924.11, or 2924.17.

(2) Any injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.5, 2923.7, 2924.11, or 2924.17 by that mortgage servicer, mortgagee, trustee, beneficiary, or

authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(c) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(d) A violation of Section 2923.5, 2923.7, 2924.11, or 2924.17 by a person licensed by the Department of Corporations, Department of Financial Institutions, or Department of Real Estate shall be deemed to be a violation of that person's licensing law.

(e) No violation of this article shall affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.5, 2923.7, 2924.11, or 2924.17 committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(h) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or was awarded damages pursuant to this section.

(i) This section shall become operative on January 1, 2018.

SEC. 18. Section 2924.15 is added to the Civil Code, to read:

2924.15. (a) Unless otherwise provided, paragraph (5) of subdivision (a) of Section 2924, and Sections 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 shall apply only to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. For these purposes, "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 19. Section 2924.15 is added to the Civil Code, to read:

2924.15. (a) Unless otherwise provided, Sections 2923.5, 2923.7, and 2924.11 shall apply only to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more

than four dwelling units. For these purposes, "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes.

(b) This section shall become operative on January 1, 2018.

SEC. 20. Section 2924.17 is added to the Civil Code, to read:

2924.17. (a) A declaration recorded pursuant to Section 2923.5 or, until January 1, 2018, pursuant to Section 2923.55, a notice of default, notice of sale, assignment of a deed of trust, or substitution of trustee recorded by or on behalf of a mortgage servicer in connection with a foreclosure subject to the requirements of Section 2924, or a declaration or affidavit filed in any court relative to a foreclosure proceeding shall be accurate and complete and supported by competent and reliable evidence.

(b) Before recording or filing any of the documents described in subdivision (a), a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

(c) Until January 1, 2018, any mortgage servicer that engages in multiple and repeated uncorrected violations of subdivision (b) in recording documents or filing documents in any court relative to a foreclosure proceeding shall be liable for a civil penalty of up to seven thousand five hundred dollars (\$7,500) per mortgage or deed of trust in an action brought by a government entity identified in Section 17204 of the Business and Professions Code, or in an administrative proceeding brought by the Department of Corporations, the Department of Real Estate, or the Department of Financial Institutions against a respective licensee, in addition to any other remedies available to these entities. This subdivision shall be inoperative on January 1, 2018.

SEC. 21. Section 2924.18 is added to the Civil Code, to read:

2924.18. (a) (1) If a borrower submits a complete application for a first lien loan modification offered by, or through, the borrower's mortgage servicer, a mortgage servicer, trustee, mortgagee, beneficiary, or authorized agent shall not record a notice of default, notice of sale, or conduct a trustee's sale while the complete first lien loan modification application is pending, and until the borrower has been provided with a written determination by the mortgage servicer regarding that borrower's eligibility for the requested loan modification.

(2) If a foreclosure prevention alternative has been approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default under either of the following circumstances:

(A) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.

(B) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder, and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

(3) If a foreclosure prevention alternative is approved in writing after the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale or conduct a trustee's sale under either of the following circumstances:

(A) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.

(B) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder, and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

(b) This section shall apply only to a depository institution chartered under state or federal law, a person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code, or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, that, during its immediately preceding annual reporting period, as established with its primary regulator, foreclosed on 175 or fewer residential real properties, containing no more than four dwelling units, that are located in California.

(c) Within three months after the close of any calendar year or annual reporting period as established with its primary regulator during which an entity or person described in subdivision (b) exceeds the threshold of 175 specified in subdivision (b), that entity shall notify its primary regulator, in a manner acceptable to its primary regulator, and any mortgagor or trustor who is delinquent on a residential mortgage loan serviced by that entity of the date on which that entity will be subject to Sections 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.12, which date shall be the first day of the first month that is six months after the close of the calendar year or annual reporting period during which that entity exceeded the threshold.

(d) For purposes of this section, an application shall be deemed "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.

(e) If a borrower has been approved in writing for a first lien loan modification or other foreclosure prevention alternative, and the servicing of the borrower's loan is transferred or sold to another mortgage servicer, the subsequent mortgage servicer shall continue to honor any previously approved first lien loan modification or other foreclosure prevention alternative, in accordance with the provisions of the act that added this section.

(f) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.

(g) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 22. Section 2924.19 is added to the Civil Code, to read:

2924.19. (a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.

(2) Any injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.5, 2924.17, or 2924.18 by that mortgage servicer, mortgagee, beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, beneficiary, or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(c) A mortgage servicer, mortgagee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(d) A violation of Section 2923.5, 2924.17, or 2917.18 by a person licensed by the Department of Corporations, the Department of Financial Institutions, or the Department of Real Estate shall be deemed to be a violation of that person's licensing law.

(e) No violation of this article shall affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.5, 2924.17 or 2924.18, committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(h) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or damages pursuant to this section.

(i) This section shall apply only to entities described in subdivision (b) of Section 2924.18.

(j) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 23. Section 2924.20 is added to the Civil Code, to read:

2924.20. Consistent with their general regulatory authority, and notwithstanding subdivisions (b) and (c) of Section 2924.18, the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate may adopt regulations applicable to any entity or person under their respective jurisdictions that are necessary to carry out the purposes of the act that added this section. A violation of the regulations adopted pursuant to this section shall only be enforceable by the regulatory agency.

SEC. 24. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

APPENDIX C

**QUICK GUIDE TO WHICH SECTIONS OF SB 900 AND AB 278
APPLY TO WHICH ENTITIES OVER WHAT TIME PERIODS**

**QUICK GUIDE TO WHICH SECTIONS OF SB 900 AND AB 278
APPLY TO WHICH ENTITIES OVER WHAT TIME PERIOD**

BILL SECTION NUMBER	CODE SECTION (CIVIL CODE)	WHO IT COVERS, OVER WHAT TIME PERIOD	WHAT IT INCLUDES (This column is <i>not</i> an all-inclusive summary of the contents of each section)
1	Uncodified (no section number)	Everyone, no sunset	Findings and declarations
2	2920.5	Everyone, no sunset	Definitions of "mortgage servicer," "foreclosure prevention alternative," and "borrower"
3	2923.4	Everyone, no sunset	Purpose statement
4	2923.5	Carved-out entities (generally smaller servicers), first five years (1/1/13-12/31/17)	SB 1137 contact requirements (same as existing law)
5	2923.5	Everyone, beginning on 1/1/18	SB 1137 contact requirements (same as existing law)
6	2923.55	Entities not subject to the carve-out (generally larger servicers), first five years (1/1/13-12/31/17)	SB 1137 contact requirements, plus statements about servicemember rights and a list of info the borrower can request from the servicer (note, deed of trust, any assignment required to demonstrate right to foreclose, payment history)
7	2923.6	Applies 1/1/13 – 12/31/17. The first two subdivisions (existing law) apply to the carved-out entities. The whole section in its entirety applies to the bigger institutions who are not carved out.	Findings and declarations apply to the carved out entities. Findings and declarations, plus prohibition against recording a notice of default (NOD) before fully evaluating a borrower who has submitted a complete loan mod app, plus appeal procedures and contents of denial letter apply to bigger institutions.
8	2923.6	Everyone, beginning on 1/1/18	Findings and declarations only (existing law)
9	2923.7	Entities not subject to the carve-out (generally the bigger institutions), no sunset	Single point of contact requirements
10	2924	Everyone. No sunset, except for the trustee sale postponement notice, which sunsets on 1/1/18.	Existing law, plus trustee sale postponement notice and clarification on who can initiate the foreclosure process.
11	2924	N/A	Deletion of duplicative section in existing law. Technical change only.

**QUICK GUIDE TO WHICH SECTIONS OF SB 900 AND AB 278
APPLY TO WHICH ENTITIES OVER WHAT TIME PERIOD**

BILL SECTION NUMBER	CODE SECTION (CIVIL CODE)	WHO IT COVERS, OVER WHAT TIME PERIOD	WHAT IT INCLUDES (This column is <i>not</i> an all-inclusive summary of the contents of each section)
12	2924.9	Entities not subject to the carve-out (generally the bigger institutions), first five years (1/1/13-12/31/17)	Requirement to send additional info 5 days post-NOD
13	2924.10	Entities not subject to the carve-out (generally the bigger institutions), first five years (1/1/13-12/31/17)	Written acknowledgement re: receipt of loan mod docs, description of loan mod process, explanation of deadlines
14	2924.11	Entities not subject to the carve-out (generally the bigger institutions), first five years (1/1/13-12/31/17)	Prohibition against recording an NOD, notice of trustee sale (NTS), or conducting a trustee's sale while a borrower is in compliance with a loan mod or there is an approved, pending foreclosure avoidance alternative.
15	2924.11	Everyone, beginning on 1/1/18	Prohibition against recording a NTS or conducting a trustee's sale until a borrower who requests an alternative to foreclosure is evaluated for it and, if denied, sent a denial letter. Prohibition against recording a NOD, NTS, or conducting a trustee's sale while a borrower is in compliance with a loan mod or there is an approved, pending foreclosure avoidance alternative.
16	2924.12	Entities not subject to the carve-out (generally the bigger institutions), first five years (1/1/13-12/31/17)	Remedies that apply only to the bigger institutions.
17	2924.12	Everyone, beginning on 1/1/18	Remedies that survive the sunset
18	2924.15	Everyone, first five years (1/1/13-12/31/17)	Coverage (owner-occupied residential real property containing no more than four dwelling units). Lists the code sections that are limited in this way.
19	2924.15	Everyone, beginning on 1/1/18	Coverage (owner-occupied residential real property containing

**QUICK GUIDE TO WHICH SECTIONS OF SB 900 AND AB 278
APPLY TO WHICH ENTITIES OVER WHAT TIME PERIOD**

BILL SECTION NUMBER	CODE SECTION (CIVIL CODE)	WHO IT COVERS, OVER WHAT TIME PERIOD	WHAT IT INCLUDES (This column is <i>not</i> an all-inclusive summary of the contents of each section)
			no more than four dwelling units). Lists a different set of code sections relative to the version of 2924.15 in effect during the first five years to reflect the sunset of several code sections.
20	2923.17	Everyone. The requirement does not sunset. The remedies sunset on 1/1/18.	Requirement that specified foreclosure documents must be accurate and complete, administrative remedies
21	2924.18	Carved-out entities, first five years	Prohibition against recording a NOD, NTS or conducting a trustee's sale until a borrower who requests an alternative to foreclosure is evaluated for it and, if denied, sent a denial letter. Prohibition against recording a NOD, NTS, or conducting a trustee's sale while a borrower is in compliance with a loan mod or there is an approved, pending foreclosure avoidance alternative.
22	2924.19	Carved-out entities, first five years	Remedies that apply only to carved-out entities
23	Uncodified (no section number)	Everyone, no sunset	Severability clause
24	Uncodified (no section number)	Everyone, no sunset	"No local agency reimbursement is required because" language.

APPENDIX D

**RECIPIENTS OF COMMUNITY ASSISTANCE GRANTS FROM
THE ATTORNEY GENERAL'S OFFICE**

California's National Mortgage Settlement Grant Program

Consumer Assistance Grantees

Asian Pacific Islander Legal Outreach (\$225,000)

Counties: Bay Area, Stockton, Modesto.

Languages/Populations: Low income, limited English proficiency, immigrants, seniors and communities of color. Language services available in 14 languages.

Project Description: This project will provide outreach, consumer education and legal assistance and representation to distressed homeowners in the Bay Area and the Central Valley. A pro bono panel of attorneys will provide services targeted to Asian Pacific Islander, immigrant and low-income homeowners, as well as those with limited English proficiency. Additionally, a new partnership with grant recipient El Concilio will be created in Modesto to expand available legal services to Asian immigrant populations in that community.

Contact: (415) 567-6255

Website: www.apilegaloutreach.org

Bet Tzedek Legal Services (\$1,750,000)

Sub-Recipients: The Southern California Coalition for Consumer Rights (Asian Pacific American Legal Center, Legal Aid Foundation of Los Angeles, Legal Aid Society of Orange County and Public Counsel).

Counties: Los Angeles, Orange, San Bernardino and Riverside.

Languages/Populations: Low income, minorities and veterans. Language services available in Spanish, Mandarin, Cantonese, Japanese, Khmer, Korean, Tagalog, Vietnamese, Farsi, Armenian, and Russian.

Project Description: This coalition of groups will create a one-stop model and interactive computer-based interview system to improve access to education, housing counseling and legal services for elderly, minority and low-income homeowners. The system will also facilitate data collection and reporting to appropriate agencies. The project will include training for an extensive "first responder" network of legal aid, housing counselors, religious leaders and other community-based organizations.

Contact: 323-939-0506

Website: <http://www.bettzedek.org/>

California Rural Legal Assistance (\$550,000)

Counties: Kern, Madera, Merced, North Santa Barbara and part of San Luis Obispo.

Languages/Populations: Low income, rural, communities of color, limited English proficiency, agricultural laborers.

Project Description: This project will target low-income, rural communities of color in some of the hardest hit counties in the Central Coast and Central Valley. The focus will be consumers with limited English proficiency and low-wage workers, including farmworkers. Through a combination of legal services, mapping research and housing counseling, CRLA will enforce compliance with the California Homeowner Bill of Rights and the terms of the National Mortgage Settlement, assist low-income consumers affected by foreclosure and study lending and homeownership trends among rural consumers in both regions.

Contact: (805) 922-4563

Website: www.CRLA.org

Central California Legal Services (\$700,000)

Sub-Recipients: Tenants Together and Community Housing Council of Fresno.

Project Description: This project will provide direct assistance during the pre-foreclosure process to increase the possibility that homeowners can save their homes and tenants can avoid evictions. Attorneys, advocates and credit counselors will perform outreach to targeted areas of four underserved counties, including mailings of educational DVDs (in English, Spanish and Hmong), personal visits, community education workshops and clinics. The array of services will include advice and representation on foreclosure avoidance, eviction proceedings, Homeowner Bill of Rights enforcement and reporting scams to appropriate enforcement agencies.

Contact: (800) 675-8001

Website: <http://www.centralcallegal.org/>

Community Housing Development Corporation (\$450,000)

Sub-Recipients: Bay Area Legal Aid, United Way of the Bay Area, Sparkpoint East Contra Costa County, Sparkpoint West Contra Costa, Sparkpoint Vallejo, Sparkpoint Fairfield, Sparkpoint American Canyon, Sparkpoint Oakland and Sparkpoint Fremont.

Counties: Solano, Contra Costa, Napa, and Alameda.

Languages/Populations: Low income, African American, Latino, youth and seniors. Multi-lingual services.

Project Description: This project will provide housing counseling, legal services, and comprehensive financial management and asset building services to seven identified Bay Area

communities. Working collaboratively through the highly effective SparkPoint initiative, over 70 economic recovery agencies will provide coordinated services to households affected by the foreclosure crisis.

Contact: (510) 412-9290 or (707) 652-7861

Websites: www.chdcnr.org or www.sparkpointcenters.org

Community Housing Works San Diego (\$500,000)

Sub-Recipients: The San Diego Home Stability Network (Legal Aid Society of San Diego and Housing Opportunities Collaborative)

County: San Diego

Languages/Populations: Low/middle income, immigrant, limited English proficiency, tenants, veterans/military. Spanish, Vietnamese, Farsi and deaf language services.

Project Description: This project will provide struggling homeowners in San Diego County with support to address their immediate obligations, along with help to build toward long-term financial stability. Among other services, the project will provide debt relief and credit repair assistance, bankruptcy protection, relocation assistance, assistance with barriers to employment, eviction and foreclosure defense and community solutions such as Virtual Empowerment Centers, which are "kiosk" like stations that connect clients to real-time face-to-face audiovisual counseling services.

Contact: To make an appointment, 888-884-4249 or General Questions, Karla Macias at 619-450-8698

Website: <http://chworks.org/>

El Concilio (\$75,000)

County: Stanislaus

Languages/Populations: Hmong, Spanish and English.

Project Description: This project will provide multi-generational financial literacy courses to underserved communities in Hmong, Spanish and English. El Concilio will also partner with API Legal Outreach to provide legal clinics focused on the Asian populations in Stanislaus County.

Contact info: (209) 644-2600

Website: www.elconcilio.org

Fair Housing of Marin (\$200,000)

Sub-Recipients: National Fair Housing Alliance and Community Action Marin/Sparkpoint Marin.

Counties: Marin, Solano and Sonoma

Languages/Populations: African-American and Latino.

Project Description: This project will provide direct foreclosure prevention counseling and education to distressed homeowners in Marin County, and research trends in the maintenance and marketing of Real Estate Owned properties in hard-hit communities of color in Solano County. Based on the results of that research, Fair Housing of Marin will explore strategies to remediate blighted properties in the region.

Contact info: 415.457.5025 or fhom@fairhousingmarin.com

Website: www.fairhousingmarin.com

Habitat for Humanity Stanislaus County (\$225,000)

Sub-Recipient: Project Sentinel

County: Stanislaus

Languages/Populations: Neighborhoods most vulnerable to home loss, communities currently underserved by housing counseling. Spanish, Mandarin, Tagalog, Cantonese and Russian language services.

Project Description: This project will focus on helping homeowners access available benefits under existing state, federal, and bank-driven remediation and relief programs, such as loan modifications and principal reductions and will provide legal referrals as needed. Habitat for Humanity Stanislaus County will also perform significant blight remediation work in order to develop lease-to-purchase programs and will acquire and rehabilitate foreclosed homes for low-income homebuyers

Contact info: (209) 575-4585

Website: <http://www.stanislaushabitat.org/>

Housing and Economic Rights Advocates (\$250,000)

Counties: San Joaquin and Bay Area.

Populations: California Homeowner Bill of Rights plaintiffs.

Project Description: This project will focus on enforcing the California Homeowner Bill of Rights in target counties. HERA will conduct outreach to consumers, train housing counselors and consumers to know and exercise their rights under the California Homeowner Bill of Rights

and litigate meritorious claims under the law. Additional target counties may be added as the project progresses.

Contact info: (510) 271-8443

Website: <http://heraca.org/index.cfm>

Inland Empire Latino Lawyers Association (\$35,000)

Counties: Riverside and San Bernardino.

Languages/Populations: Monolingual Spanish speakers, low income and illiterate.

Project Description: This project will assist tenants of foreclosed properties in unlawful detainer actions and actions brought in small claims court involving the return of tenants' security deposits and other issues.

Contact info: 951-369-3009

Website: www.iellaaid.org

Inland Fair Housing and Mediation Board (\$850,000)

Sub-Recipients: Inland Counties Legal Services and Fair Housing Council of Riverside County.

Counties: San Bernardino, Riverside and Imperial.

Languages/Populations: Spanish speaking, low income, rural desert populations, disabled, Native Americans and veterans.

Project Description: This project will introduce a new, comprehensive education program called *PATHS* to provide a personalized, "whole family" approach to housing stabilization and wealth building. The program will implement a tri-county partnership of organizations and focus on underserved populations in this hard-hit region of California.

Contact info: 1-800-321-0911

Website: www.ifhmb.com

Legal Aid Foundation of Santa Barbara (\$450,000)

Sub-Recipient: SurePath Financial Solutions

County: Santa Barbara

Languages/Populations: Focus on Santa Maria and Lompoc, which have the highest rates of notices of default and sale, and areas of high unemployment. Language services will be available in English and Spanish.

Project Description: This project will implement a new partnership to provide a broad spectrum of legal and financial services to distressed homeowners including legal intervention, loan modification, bankruptcy filing and housing counseling. Where foreclosure cannot be avoided, the project will assist homeowners and tenants through eviction defense, re-location, financial education, credit repair, and referrals for counseling and educational resources. Additionally, the project will provide education and outreach to underserved communities to inform them of community resources and their rights under the California Homeowner Bill of Rights.

Contact: 805-963-6754 or info@lafsbcc.org

Website: www.lafsbcc.org

Legal Services of Northern California (\$725,000)

Sub-Recipient: Housing and Economic Rights Advocates

Counties: Amador, Calaveras, El Dorado, Nevada, Placer, Sierra, Butte, Colusa, Glenn, Plumas, Tehama, Del Norte, Humboldt, Lassen, Modoc, Shasta, Siskiyou, Trinity, Mendocino, Lake, Solano County, Yolo and Sacramento.

Languages/Populations: Low-income, geographically isolated, limited English proficiency, seniors and persons with disabilities.

Project Description: This project will provide a variety of services to some of the most vulnerable current and former homeowners and renters, including people who are low-income, geographically isolated, limited-English proficient, senior and disabled. The focus will be to reduce and/or remedy the devastating effects of home loss, as well as to eliminate barriers to economic security in 23 mostly rural Northern California counties.

Contact: (916) 551-2150

Website: www.lsncc.net

Mission Economic Development Agency (\$550,000)

Sub-Recipients: Alliance of Californians for Community Empowerment, East Los Angeles Community Corporation and Neighborhood Housing Services of the Inland Empire.

Counties: Bay Area (San Francisco, San Mateo, Alameda, and Contra Costa), Los Angeles, Orange, San Bernardino, and Riverside.

Languages/Populations: Latino and Spanish speaking.

Project Description: This project will provide outreach, homeownership counseling, foreclosure intervention, financial education and supportive services to low/moderate-income Latino families in Northern and Southern California. The innovative "housing+" strategy will include: integrated bilingual services for prospective and at-risk homeowners; capacity building, training and shared

financial education curriculum for local nonprofits. Programs will focus on reaching underserved, Spanish-speaking Latino communities through state-of-the-art mobile labs.

Contact: (415) 282-3334

Website: www.medasf.org

National Telemarketing Victim Call Center (\$100,000)

Counties: Statewide

Languages/Populations: Multi-lingual services (Spanish, Farsi, Russian, Mandarin, Tagalog).

Project Description: This project will provide fraud prevention education to 30,000 consumers who are at risk of mortgage-related mass marketing fraud. The National Telemarketing Victim Call Center will help consumers understand scammers' marketing pitches, and will work with victims of a mass marketing fraud to seek redress and file complaints with the appropriate enforcement agency.

Contact info: (310) 351-0024

Website: <http://ntvcc.org/>

Neighborhood Housing Services of Los Angeles County (\$500,000)

Sub-Recipients: Shalom Center, West Angeles Community Development Corporation and Fair Housing Council.

County: Los Angeles

Languages/Population: Low/moderate income, minority, veterans, seniors and faith-based. Language services in English, Spanish, Korean, French, Tagalog and Chinese.

Project Description: NHS of Los Angeles County is partnering with local HUD approved housing counseling agencies and consumer protection attorneys to form Foreclosure Counseling Solutions (FCS). The partnership will conduct extensive outreach and provide free foreclosure counseling and fraud protection services to local employers, faith-based groups, veterans, families and individuals.

Contact: 888-895-2647

Website: <http://www.nhslacounty.org/>

NeighborWorks Orange County (\$345,000)

Sub-Recipients: 2-1-1 Orange County, Affordable Housing Clearinghouse, Consumer Credit Counseling Services of Orange County, Legal Aid Society of Orange County, Public Law Center, Veterans First and WHW (Women Helping Women/Men2Work)

County: Orange

Languages/Populations: Low/middle income residents. English, Spanish and Vietnamese language services.

Project Description: This project will connect hard-hit residents to holistic housing counseling, foreclosure prevention, civil legal assistance, financial case management and employment support services. It combines the strengths and assets of well-established organizations in the region that work in affordable housing and community development, credit counseling, workforce development, legal services, as well as organizations that work with veterans and military communities.

Contact info: (714) 490- 1250

Website: <http://www.nwoc.org/>

Tri-Valley Housing Opportunity Center (\$50,000)

Counties: Santa Clara, Alameda and Contra Costa.

Populations: Struggling homeowners.

Project Description: This project aims to reach 10,000 homeowners in Eastern Alameda County facing some stage of mortgage distress. This pilot program is a partnership between the Tri-Valley Housing Opportunity Center, a HUD-approved nonprofit housing counseling agency, and Legacy Real Estate, an ethnically diverse real estate brokerage. The project utilizes local realtors to deliver information about foreclosure recovery services offered by the Tri-Valley Housing Opportunity Center and other services available in the community.

Contact: info@tvhoc.org or 925-373-3130

Website: www.tvhoc.org

The Unity Council (\$575,000)

Sub-Recipient: Sacramento Home Loan Counseling Center

Coverage Area: Bay Area

Languages/Populations: Rural and youth communities. English, Spanish and Mandarin language services.

Project Description: The Spanish Speaking Unity Council of Alameda County, Inc., (The Unity Council), has joined together with the Home Loan Counseling Center of Sacramento to provide innovations in financial education and housing counseling for California residents. The project combines holistic financial education and counseling with long term, customized financial coaching. The partners will release a self-paced highly interactive online financial education series that is designed to promote new ideas and thinking about money and the way it's managed.

Contact info: (510) 535-6900

Website: www.unitycouncil.org

Watsonville Law Center (\$295,000)

Sub-Recipients: Senior Citizens Legal Services, Legal Services for Seniors, Community Action Board, SurePath, Santa Cruz Community Ventures and Communities Organized for Relational Power in Action (COPA)

Counties: Santa Cruz, Monterey and San Benito.

Languages/Populations: Low-income families, seniors, agricultural workers, Spanish-speaking immigrant communities, rural homeowners and victims of consumer fraud.

Project Description: This project involves a partnership of local legal aid, housing counselors and community service nonprofits to help the most vulnerable Central Coast families achieve housing and household financial stability in the wake of the foreclosure crisis.

Contact: (831) 722-2845

Website: <http://watsonvillelawcenter.org/>

APPENDIX E

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF
RIGHTS SERVICING REQUIREMENTS
(OPERATIVE BEGINNING IN 2013)
WITH
NATIONAL SERVICING REQUIREMENTS
(OPERATIVE BEGINNING IN 2014)**

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014)	SB 900/AB 278 (January 2013 through December 2017)	SB 900/AB 278 (January 2018 and beyond)
What Loans Are Covered	Residential mortgage loans secured by a borrower's owner-occupied, one-to-four unit principal residence	First liens secured by a borrower's owner-occupied, one-to-four unit principal residence	First liens secured by a borrower's owner-occupied, one-to-four unit principal residence
What Entities Are Covered	Servicers	Servicers, mortgagees, beneficiaries, trustees, authorized agents	Servicers, mortgagees, trustees, beneficiaries, authorized agents
Small Servicer Definition	A servicer that, together with its affiliates, services (either as the originator or as an assignee) 5,000 or fewer single family residential mortgage loans, as of January 1 st of any given year. Housing finance agencies are also considered "small servicers," despite the sizes of their servicing portfolios.	A licensee that foreclosed on 175 or fewer one-to-four unit residential real properties in California during its most recent prior annual reporting period.	A licensee that foreclosed on 175 or fewer one-to-four unit residential real properties in California during its most recent prior annual reporting period.
Prohibition Against Recording A Notice Of Default	Servicers may not record a NOD until a borrower is more than 120 days delinquent. See also a separate prohibition in the loss mitigation section.	Servicers, mortgagees, trustees, beneficiaries, or authorized agents may not record a NOD until 30 days after initial contact is made with a borrower or 30 days after satisfying due diligence requirements to establish contact. See also a separate prohibition in the loss mitigation section.	Servicers, mortgagees, trustees, beneficiaries, or authorized agents may not record a NOD until 30 days after initial contact is made with a borrower or 30 days after satisfying due diligence requirements to establish contact. See also a separate prohibition in the loss mitigation section.
BORROWER OUTREACH			
Live Contact	Servicers must establish live contact with or make good faith efforts to establish live contact with a borrower not later than 36 days after a borrower becomes delinquent.	Prior to recording a NOD, servicers must contact a borrower in person or by telephone, or undertake due diligence to do so.	Prior to recording a NOD, servicers must contact a borrower in person or by telephone, or undertake due diligence to do so.
Minimum Efforts	"Good faith efforts" may include telephoning the borrower on more	"Due diligence" includes sending a first-class letter, and phoning the	"Due diligence" includes sending a first-class letter, and phoning the

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014)	SB 900/AB 278 (January 2013 through December 2017)	SB 900/AB 278 (January 2018 and beyond)
Required To Establish Live Contact	than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer.	borrower at least three times at different hours and on different days. If there is no response following the letter or the phone calls, the servicer must send a certified letter with return receipt requested.	borrower at least three times at different hours and on different days. If there is no response following the letter or the phone calls, the servicer must send a certified letter with return receipt requested.
Written Notice Pre-NOD	Servicers must provide written notice to a borrower not later than 45 days after that borrower becomes delinquent. This notification must include: 1) a statement encouraging the borrower to contact the servicer; 2) the servicer's mailing address and a phone number for the contact person assigned to the borrower; 3) a statement providing a brief description of loss mitigation options that may be available from the servicer, and either application instructions or a statement informing the borrower how to obtain more information about these options; and 4) websites for CFPB's or HUD's list of homeownership counselors or counseling organizations and HUD's toll-free telephone number to access these groups.	Prior to recording a NOD, servicers must send the following to delinquent borrowers in writing: 1) a statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the Servicemembers Civil Relief Act; 2) a statement that the borrower may request a copy of his/her promissory note or other evidence of indebtedness, a copy of their deed of trust or mortgage, a copy of any assignment of their mortgage or deed of trust required to demonstrate the servicer's right to foreclose, and a copy of their payment history since they were last less than 60 days past due; and 3) HUD's toll-free number for housing counseling agencies.	No requirements of this type.
Written Notice Post-NOD	No requirements of this type.	Unless a borrower has previously exhausted the first lien loan modification process, servicers that	No requirements of this type.

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014)	SB 900/AB 278 (January 2013 through December 2017) offer one or more foreclosure prevention alternatives must send the following to the borrower in writing, within five business days after recording a NOD: 1) a statement that the borrower may still be evaluated for one or more alternatives to foreclosure; 2) a statement informing the borrower whether an application is required to be considered for this alternative/these alternatives; and 3) information on the means and process by which a borrower may obtain an application, if one is required.	SB 900/AB 278 (January 2018 and beyond)
SERVICER POINT OF CONTACT			
When and To Whom Assigned By Servicer	Assigned to every borrower who is at least 45 days delinquent.	Assigned upon request from a borrower who requests a foreclosure prevention alternative.	Assigned upon request from a borrower who requests a foreclosure prevention alternative.
Type Of Personnel	Either an individual or a team of personnel. Personnel may be single-purpose or multiple-purpose. Single-purpose personnel are people whose primary responsibility is responding to delinquent borrowers' inquiries. Multiple-purpose personnel are people who don't have a primary responsibility or whose primary responsibility involves something other than responding to delinquent borrowers' inquiries.	Either an individual or a team of personnel, each of whom has the ability and authority to perform the responsibilities listed immediately below. Each member of a team must be knowledgeable about the borrower's situation and current status in the loss mitigation process.	Either an individual or a team of personnel, each of whom has the ability and authority to perform the responsibilities listed immediately below. Each member of a team must be knowledgeable about the borrower's situation and current status in the loss mitigation process.

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	<p>National Servicing Standards (Operative January 2014) Must be available by phone and, if not immediately available, must respond to borrowers in a timely manner. Must provide a delinquent borrower with accurate information about: 1) loss mitigation options available to that borrower through the servicer, actions the borrower must take to be evaluated for such options, and, if applicable, to appeal the servicer's denial of a loss mitigation application; 2) the status of any loss mitigation application submitted by the borrower to the servicer; 3) the circumstances under which the servicer may make a referral to foreclosure; and 4) any loss mitigation deadlines the borrower must meet. Must retrieve the following in a timely manner: 1) a complete record of the borrower's payment history; 2) all documents the borrower has submitted to the servicer in connection with a loss mitigation application; and 3) documents the borrower has submitted to prior servicers in connection with prior applications for loss mitigation, to the extent they are in the servicer's possession. Must provide borrower documents to</p>	<p>SB 900/AB 278 (January 2013 through December 2017) Must do all of the following: 1) communicate the process by which a borrower may apply for available foreclosure prevention alternatives, and the deadline for any required submissions; 2) coordinate receipt of all documents associated with foreclosure prevention options and notify the borrower of any missing documents; 3) have access to current information necessary to timely, accurately, and adequately inform the borrower of the current status of his/her foreclosure prevention alternatives; 4) ensure that a borrower is considered for all foreclosure prevention alternatives offered by or through the servicer; and 5) have access to individuals with the ability and authority to stop foreclosure proceedings when necessary.</p>	<p>SB 900/AB 278 (January 2018 and beyond) Must do all of the following: 1) communicate the process by which a borrower may apply for available foreclosure prevention alternatives, and the deadline for any required submissions; 2) coordinate receipt of all documents associated with available foreclosure prevention options and notify the borrower of any missing documents; 3) have access to current information necessary to timely, accurately, and adequately inform the borrower of the current status of his/her foreclosure prevention alternatives; 4) ensure that a borrower is considered for all foreclosure prevention alternatives offered by or through the servicer; and 5) have access to individuals with the ability and authority to stop foreclosure proceedings when necessary.</p>
<p>Duties Of Contact Personnel</p>			

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014)	SB 900/AB 278 (January 2013 through December 2017)	SB 900/AB 278 (January 2018 and beyond)
	persons authorized to evaluate the borrower for loss mitigation options offered through the servicer, if the contact personnel is/are not authorized to evaluate the borrower for those options. Must provide information to the borrower about how to submit a notice of error or make an information request.		
Contact Personnel Are No Longer Required	When a borrower makes two consecutive timely mortgage payments in accordance with a permanent loss mitigation agreement.	When the servicer determines that all loss mitigation options offered by or through that servicer have been exhausted, or the borrower's account becomes current.	When the servicer determines that all loss mitigation options offered by or through that servicer have been exhausted, or the borrower's account becomes current.
LOSS MITIGATION			
Right to Loss Mitigation	"Nothing in Section 1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in Section 1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law." The requirements of Section 1024.41 are in addition to, and not in lieu of, any owner or	"The purpose of the act... is to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower's mortgage servicer. Nothing in the act... shall be interpreted to require a particular result of that process."	"The purpose of the act... is to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower's mortgage servicer. Nothing in the act... shall be interpreted to require a particular result of that process."

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014) assignee requirements. Servicers must have policies and procedures reasonably designed to evaluate borrowers for loss mitigation consistent with any owner or assignee requirements, irrespective of what 1024.41 may require.	SB 900/AB 278 (January 2013 through December 2017)	SB 900/AB 278 (January 2018 and beyond)
Definition Of A Complete Application	One in connection with which a servicer has received all the information the servicer regularly requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. A loss mitigation application is considered complete when a borrower provides all the information required from the borrower, even if additional information that is not in control of the borrower is required by a servicer (e.g., a credit report).	A loan modification application is deemed complete when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the servicer.	A loan modification application is deemed complete when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the servicer.
Written Notification Required When An Application Is Submitted	If a loss mitigation application is received by a servicer 45 days or more before a foreclosure sale, the servicer must notify the borrower within five business days whether the application is complete or incomplete. If the application is incomplete, the servicer must inform the borrower which documents are missing and the date by which the	When any document in connection with a first lien loan modification application is submitted, the servicer must provide written acknowledgment of its receipt within five business days. In its initial acknowledgment of receipt of a loan modification application, the servicer must: 1) include a description of the loan modification process, an estimate of when a decision will be	No requirement of this type.

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014)	SB 900/AB 278 (January 2013 through December 2017)	SB 900/AB 278 (January 2018 and beyond)
	<p>missing documents must be submitted. The servicer must also encourage the borrower to contact servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.</p>	<p>made after submission of a complete application, and the length of time the borrower will have in which to consider an offered alternatives; 2) inform the borrower of any deficiency in his/her application; 3) provide deadlines for the borrower to submit missing information; and 4) inform the borrower of the expiration dates, if any, of submitted documents.</p>	
<p>Length of Time in Which Servicers Must Act on a Complete Application</p>	<p>If a complete loss mitigation application is received more than 37 days before a foreclosure sale, the servicer must evaluate that application and provide a written determination within 30 days.</p>	<p>No specific timing required.</p>	<p>No specific timing required.</p>
<p>Prohibition on Recording a Notice of Default While A Complete Application is Pending</p>	<p>If a borrower submits a complete loss mitigation application before the servicer records a NOD, the servicer may not record a NOD unless: 1) the servicer determines that the borrower is not eligible for loss mitigation, and either the appeal process is inapplicable, the borrower doesn't request an appeal within the applicable time period for requesting an appeal, or the borrower's appeal is denied; 2) the borrower rejects the servicer's offer of loss mitigation; or 3) the borrower fails to perform</p>	<p>If a borrower submits a complete first lien loan modification application, the servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a NOD while that application is pending, or until one of the following occurs: 1) the servicer makes a determination that the borrower is ineligible for a modification, and any appeal period has expired, 2) the borrower does not accept an offered loan modification within 14 days of its offer; or 3) the borrower accepts the offered</p>	<p>No requirements of this type.</p>

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014) under an approved loss mitigation option.	SB 900/AB 278 (January 2013 through December 2017) modification, but defaults on or otherwise breaches his or her obligation under the loan modification agreement.	SB 900/AB 278 (January 2018 and beyond)
Prohibition on Moving Farther Forward In The Foreclosure Process While A Complete Application is Pending	If a borrower submits a complete loss mitigation application after the servicer records a NOD, but more than 37 days before a foreclosure sale, the servicer may not record a notice of sale unless: 1) the servicer determines that the borrower is not eligible for loss mitigation, and either the appeal process is inapplicable, the borrower doesn't request an appeal within the applicable time period for requesting an appeal, or the borrower's appeal is denied; 2) the borrower rejects the servicer's offer of loss mitigation; or 3) the borrower fails to perform under an approved loss mitigation option.	If a borrower submits a complete first lien loan modification application after recordation of a NOD, the servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale or complete a trustee's sale while that application is pending, or until one of the following occurs: 1) the servicer makes a determination that the borrower is ineligible for a modification, and any appeal period has expired, 2) the borrower does not accept an offered loan modification within 14 days of its offer; or 3) the borrower accepts the offered modification, but defaults on or otherwise breaches his or her obligation under the loan modification agreement.	If a borrower submits a complete application for a foreclosure prevention alternative offered by or through that servicer, the servicer, trustee, mortgagee, beneficiary, or authorized agent shall not record a notice of sale or conduct a trustee's sale while that application is pending, and until the borrower has been provided with a written determination on his/her application. A servicer, mortgagee, trustee, beneficiary, or authorized agent may not take the next step in the foreclosure process, once a foreclosure prevention alternative is approved in writing, if: 1) the borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan; or 2) a foreclosure prevention alternative (i.e., a short sale) has been approved in writing by all parties, and proof of funds or financing has been provided to the servicer.

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014)	SB 900/AB 278 (January 2013 through December 2017)	SB 900/AB 278 (January 2018 and beyond)
Requirements of Denial Notice	A servicer that denies a complete loss mitigation application must provide a written denial letter to the borrower, stating the specific reason(s) for the denial, informing the borrower that he/she may appeal, providing the borrower with a deadline by which the appeal must be submitted, and listing what documents must be submitted in connection with the appeal. If a loan modification is denied because of a requirement of an owner or assignee of the mortgage, the specific reason for denial must identify the owner or assignee and the requirement that is the basis for the denial. If a loan modification is denied because of a net present value (NPV) calculation, the notice must include the monthly gross income and property value used in the calculation.	If a borrower's first lien loan modification application is denied, the servicer must send a written notice of denial to the borrower, identifying the reasons for denial, and informing the borrower how to appeal the denial, including the date by which the appeal must be submitted. If the denial was based on investor disallowance, the notice must state the specific reasons for the investor disallowance. If the denial was the result of a NPV calculation, the notice must state the monthly gross income and property value used to calculate the NPV, and must inform the borrower that he/she may obtain all of the inputs used in the NPV calculation, upon written request to the servicer. If applicable, the denial letter must also inform the borrower of other foreclosure prevention alternatives for which he/she may be eligible, and what steps to take to be considered for those alternatives.	If a borrower's first lien loan modification application is denied, the servicer must send a written notice of denial to the borrower, identifying with specificity the reasons for the denial, and including a statement that the borrower may obtain additional documentation supporting the denial decision upon written request to the servicer.
Prohibition Against Moving Farther In The Foreclosure Process	A servicer may not move farther in the foreclosure process following its denial of a complete loss mitigation application, until: 1) it determines that the borrower will not appeal, or that the appeal process is inapplicable, or 2) it denies the	If a borrower's application for a first lien loan modification is denied, the servicer, mortgagee, trustee, beneficiary, or authorized agent may not take the next step in the foreclosure process, until 31 days after the borrower is notified in writing of the	No requirement of this type.

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014)	SB 900/AB 278 (January 2013 through December 2017)	SB 900/AB 278 (January 2018 and beyond)
When An Appeal Is Filed	borrower's appeal.	denial. If a borrower appeals his/her denial, the servicer may not take the next step in the foreclosure process until 15 days after denying the appeal, or until 14 days after: 1) a borrower rejects a loan modification that is offered following the appeal; or 2) a borrower breaches the terms of a loan modification agreement that is offered and accepted following the appeal.	
Time To Accept An Offer Of Loss Mitigation	<p>If a borrower submits a complete loss mitigation application at least 90 days before a foreclosure sale, a servicer may require that the borrower accept or reject an offer of loss mitigation by a deadline which must be no earlier than 14 days after the offer is communicated to the borrower.</p> <p>If a borrower submits a complete loss mitigation application less than 90 days, but more than 37 days before a foreclosure sale, the servicer may require the borrower to accept or reject that offer no earlier than 7 days after the offer is communicated to the borrower.</p> <p>A borrower who fails to reply to an offer of loss mitigation extended by</p>	<p>Servicers are required to inform borrowers of the length of time they will have to consider an offer of a loan modification or other foreclosure prevention alternative, in the notice that servicers are required to provide to borrowers following submission of any document in connection with a first lien loan modification application.</p> <p>Servicers must wait at least 14 days following their offer of a first lien loan modification to a borrower, before they may take the next step in the foreclosure process.</p>	No requirement of this type.

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	<p>National Servicing Standards (Operative January 2014) his/her servicer, within the deadlines established by his/her servicer, and who fails to submit payment in accordance with an offer of loss mitigation, is deemed to have rejected the offer. A borrower who doesn't reply to an offer of loss mitigation, but who submits a payment in accordance with an offered option, must be given a reasonable period of time by his/her servicer to fulfill any remaining requirements the servicer has, to finalize acceptance of the offered option.</p>	<p>SB 900/AB 278 (January 2013 through December 2017)</p>	<p>SB 900/AB 278 (January 2018 and beyond)</p>
<p>Appeal Rules</p>	<p>A borrower who submits a complete loss mitigation application at least 90 days before a foreclosure sale is entitled to appeal a servicer's denial. The appeal must be submitted within 14 days of the servicer communicating the loss mitigation evaluation to the borrower. Servicers have 30 days in which to act on appeals. Decisions on appeals cannot be repealed. Servicers may require successful appellants to accept loss mitigation offers no earlier than 14 days after informing the borrower that their appeal has been approved.</p>	<p>A borrower whose application for a first lien loan modification is denied must be given at least 30 days from the date of the written denial to appeal that denial.</p>	<p>No requirement of this type.</p>

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014)	SB 900/AB 278 (January 2013 through December 2017)	SB 900/AB 278 (January 2018 and beyond)
	<p>LOSS MITIGATION RULES APPLICABLE TO SMALL SERVICERS</p> <p>A small servicer may not record a NOD until a borrower is more than 120 days delinquent. A small servicer may not take the next step in the foreclosure process, while a borrower is performing pursuant to a loss mitigation agreement.</p>	<p>A small servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a NOD until 30 days after initial contact is made with a borrower, or 30 days after satisfying due diligence requirements to establish contact.</p> <p>If a borrower submits a complete application for a first lien loan modification, a small servicer, trustee, beneficiary, or authorized agent may not record a NOD, notice of sale, or conduct a trustee's sale while the modification application is pending, and until the borrower has been provided with a written determination on his/her application.</p> <p>A small servicer, mortgagee, trustee, beneficiary, or authorized agent may not take the next step in the foreclosure process, once a foreclosure prevention alternative is approved in writing, if:</p> <ol style="list-style-type: none"> 1) the borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan; or 2) a foreclosure prevention alternative (i.e., a short sale) has been approved in 	<p>Beginning on 1/1/18, small servicers are subject to most of the same rules that apply to larger servicers. Those rules are summarized immediately below. However, small servicers are not subject to the "single point of contact" requirements, either before or after 1/1/18.</p> <p>A small servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a NOD until 30 days after initial contact is made with a borrower, or 30 days after satisfying due diligence requirements to establish contact.</p> <p>If a borrower submits a complete application for a foreclosure prevention alternative offered by or through a small servicer, the small servicer, trustee, mortgagee, beneficiary, or authorized agent may not record a notice of sale or conduct a trustee's sale while the application is pending, and until the borrower has been provided with a written determination on his/her application.</p>

**COMPARISON OF CALIFORNIA HOMEOWNER BILL OF RIGHTS SERVICING REQUIREMENTS
WITH NEW NATIONAL SERVICING REQUIREMENTS**

	National Servicing Standards (Operative January 2014)	SB 900/AB 278 (January 2013 through December 2017) writing by all parties, and proof of funds or financing has been provided to the servicer.	SB 900/AB 278 (January 2018 and beyond) If a borrower's first lien loan modification application is denied by a small servicer, the servicer must send a written notice of denial to the borrower, identifying with specificity the reasons for the denial, and including a statement that the borrower may obtain additional documentation supporting the denial decision upon written request to the servicer. A small servicer, mortgagee, trustee, beneficiary, or authorized agent may not take the next step in the foreclosure process, once a foreclosure prevention alternative is approved in writing, if: 1) the borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan; or 2) a foreclosure prevention alternative (i.e., a short sale) has been approved in writing by all parties, and proof of funds or financing has been provided to the servicer.
REMEDIES			
	All of the rules summarized above are enforceable via the Consumer Financial Protection Bureau and	Private rights of action are authorized for material violations that go uncorrected by a servicer, mortgagee,	Private rights of action are authorized for material violations that go uncorrected by a servicer,

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<p>National Servicing Standards (Operative January 2014)</p> <p>other regulators (state and federal) with jurisdiction over the servicers subject to the rule.</p> <p>The loss mitigation rules (12 CFR Section 1024.41) may also be enforced via a private right of action and through class action. Borrowers who prevail through individual lawsuits are entitled to actual damages, plus up to \$1,000 per violation, plus reasonable attorney's fees and costs. Successful class actions provide each borrower in the class with actual damages, plus up to \$1,000 per violation, capped at the lesser of \$500,000 or 1% of the servicer's net worth, plus reasonable attorney's fees and costs.</p>	<p>SB 900/AB 278 (January 2013 through December 2017)</p> <p>beneficiary, or authorized agent. Borrowers may bring actions for injunctive relief prior to the completion of a trustee's sale, and for actual economic damages following a trustee's sale. A court may increase the post-trustee sale award to the greater of treble actual damages or statutory damages of \$50,000, if the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a servicer, mortgagee, beneficiary, or authorized agent. Successful appellants (as defined) are also entitled to reasonable attorney's fees and costs.</p>	<p>SB 900/AB 278 (January 2018 and beyond)</p> <p>mortgagee, beneficiary, or authorized agent. Borrowers may bring actions for injunctive relief prior to the completion of a trustee's sale, and for actual economic damages following a trustee's sale. A court may increase the post-trustee sale award to the greater of treble actual damages or statutory damages of \$50,000, if the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a servicer, mortgagee, beneficiary, or authorized agent. Successful appellants (as defined) are also entitled to reasonable attorney's fees and costs.</p>
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