

Hypo 1

Sylvia came to your office with the loan modification agreement she entered into with her servicer (see end of packet). She tells you that she thought everything was fine after Michelle, her Single Point of Contact at the bank, told her that she qualified for a loan modification and that the foreclosure process would be put on hold. She received a trial HAMP modification and made all the required payments. The SPOC told her to continue making payments until the bank made a final decision on the modification.

Then the bank suddenly returned her last payment and recorded a notice of default last week. When asked, her SPOC couldn't tell her why the bank is foreclosing on her.

Does Sylvia have a legal claim? If so, under what theories?

Answer:

Corvello v. Wells Fargo Bank, NA, 728 F.3d 878 (9th Cir. 2013)
West v. JP Morgan Chase Bank, N.A., 214 Cal. App. 4th 78 (2013)
Bushell v. JP Morgan Chase Bank, N.A., 220 Cal. App. 4th 915 (2013)
Aharonoff v. Am. Home Mortg. Servicing, 2012 WL 1925568 (Cal. Ct. App. May 29, 2012)
Civ. Code § 2923.7
Civ. Code § 2923.6

Would there be any difference if Sylvia had a permanent modification?

Answer:

Barroso v. Ocwen Loan Servicing, 208 Cal. App. 4th 1001 (2012)
Chavez v. Indymac Mortg. Servs., 219 Cal. App. 4th 1052 (2013)
Schlegel v. Wells Fargo Bank, N.A., 720 F.3d 1204 (9th Cir. 2013)
Civ. Code § 2924.11

Hypo 2

Molly submitted a loan modification application to Nationstar on August 1. Nationstar sent Molly a letter on August 7 that the modification is under review. On August 20, a notice of trustee sale was recorded by the trustee. Alarmed by the possibility that her home would be sold, she turned to the only lawyer in the family, you.

1. Are there any legal violations? If so, which ones?

Answer:

Civ. Code § 2923.6; 12 C.F.R. § 1024.41

2. What if Molly submitted the application in December 2012?

Answer:

Ware v. Bayview Loan Servicing LLC, 2013 WL 6247236 (S.D. Cal. Oct. 29, 2013)

3. What if the application was initially incomplete?

Answer:

Civ. Code § 2924.10; 12 C.F.R. § 1024.41(b)(2)(i)(B)

4. Does the answer change if Molly's servicer is Bank of America?

Answer:

Civ. Code § 2923.6

5. What if Molly applied for a short sale instead of loan modification?

Answer:

Civ. Code § 2924.11; 12 C.F.R. § 1024.41

Hypo 3

Your Aunt Marge came to you in a big hurry. She was sued by Big and Bigger Financial to collect on the HELOC loan that she took out in 2007. She asks you, "I thought the foreclosure wiped out my debt. Didn't it?" At the time of the foreclosure, she owed \$560,000 on first mortgage with Wells Fargo, and the home was worth \$500,000. What do you advise her?

Answer:

Code Civ. Proc. § 580b

Code Civ. Proc. § 580d

Heritage Fin. v. Monroy, 215 Cal. App. 4th 972 (2013)

SB 426 (amending Code Civ. Proc. §§ 580b, 580d)

Hypo 4

Same facts as hypos 1-2, except a foreclosure happened and an unlawful detainer action has been filed on June 20. The notice attached to the complaint is a 3/30/90 day notice dated June 13.

A. Should you file a pre-trial motion? Which one and why? Or why not?

Answer:

Code Civ. Proc. § 1161a

Code Civ. Proc. § 1161c

Delta Imports v. Municipal Court, 146 Cal. App. 3d 1033 (1983)

Martin-Bragg v. Moore, 219 Cal. App. 4th 367 (2013)

B. The case proceeded to trial. Since you're Ms. Mortgage in the office, you investigated the public records and propounded discovery. During your investigation, you discovered that the deed of trust named Commonwealth Land Title Company as the trustee, but Recontrust conducted the foreclosure sale. What defenses should you raise?

Bank of N.Y. Mellon v. Preciado, 224 Cal. App. 4th Supp. 1 (2013)

C. Sylvia also had a tenant, Sam, in the second unit of her duplex who was served the substantially same notice and a cover sheet. On September 20, the bank filed an eviction against Sam. Sam paid \$1,600 per month on his lease that goes through November, even though similar units in the neighborhood average about \$2,300 per month to rent. What now?

Answer:

Code Civ. Proc. § 1161b

Harper v. JP Morgan Chase Bank N.A., 699 S.E.2d 854 (Ga. Ct. App. 2010)

D. Same facts as C, except Sam is a Housing Choice Voucher tenant.

Answer:

24 C.F.R. § 982.310(e)(2)(ii)

74 Fed. Reg. 30,107, 30,108

E. Same facts as C, except Sam lives in Oakland.

Answer:

Oakland Mun. Code § 8.22.360

Gross v. Superior Court, 171 Cal. App. 3d 265 (1985)