

### Pre- Foreclosure Step By Step Compliance Checklist & Order Form

A. **Homeowner's Bill of Rights "HBOR"** (under 175 foreclosures per year threshold) checklist:  
The undersigned, as an authorized agent or employee of the mortgage servicer, declares that through competent and reliable evidence, including a review of its file, that it is:

1.  A depository institution chartered under state or federal law; a licensed California Finance Lender or Residential Mortgage Lender; or a person licensed as a real estate broker, 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.

B. **Are the borrower the loan and the property subject to HBOR?:** HBOR only applies to first deeds of trust where the security is "owner-occupied".

1. The loan referred for foreclosure  is; or  is not a first lien deed of trust that is secured by owner-occupied residential real property (borrower's principal residence) containing no more than four dwelling units and is security for a loan made for personal, family, or household purposes.

**If you checked the box for "is" to this question, the loan and security will be subject to HBOR compliance. If you checked the box stating "is not", the loan is exempt under the HBOR "pre-foreclosure contact provisions" (skip questions 2, 3 and 4 and proceed to Section C and mark box 4.)**

2.  The borrower(s) under the note is a "natural person" i.e., a human being and not a corporation, Limited Liability Company ("LLC"), a general partner of a partnership, a limited liability company, estate or a public entity.
3.  The borrower(s) was/were the "trustor" or "mortgagor" under the original deed of trust.
4.  The "borrower" is *potentially* eligible for any federal, state, or proprietary foreclosure prevention alternative program offered by, or through, the borrower's mortgage servicer. A "foreclosure prevention alternative" ("FPA") means a first lien loan modification or another available loss mitigation option. FPA's may include: Trial or permanent loan modifications (HARP, HAMP or proprietary programs); Forbearances or workout agreements; Deeds-in-lieu of foreclosures; Short sales; Refinances.

**If you checked any of the boxes 2, 3 or 4 above, the borrower will be subject to HBOR compliance. If you did not check any of the boxes 2, 3 or 4 above, the loan is exempt under the HBOR "pre-foreclosure contact provisions" (mark box 3 in Section C.)**

C. **HBOR Contact Declaration "pre-foreclosure due diligence" under Civil Code § 2923.5(b). Use this answer in order to complete the attached "Declaration of Mortgage Servicer Pursuant to Civil Code §2923.5(b)."**

1.  The Mortgage Servicer has attempted to contact the borrower by first sending a first-class letter that included the HUD toll-free telephone number (1-800-569-4287 or TTY/TDD 1-800-877-8339.) The mortgage servicer has then made contact with the borrower by telephone and assessed the borrower's financial situation and explored options for the borrower to avoid foreclosure. Thirty (30) days, or more, have passed since the initial contact was made. **(mark box 1 on the attached "Declaration of Mortgage Servicer.")**

2.  The borrower did not respond within two weeks after the above telephone call requirements and the Mortgage Servicer has sent a certified letter, with return receipt requested. The Mortgage Servicer has provided 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. If the Mortgage Servicer has a website, it has posted a prominent link on the homepage of its Internet Web site to the following information: Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options. A list of financial documents borrowers should collect and be prepared to present to the Mortgage Servicer when discussing options for avoiding foreclosure. A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgagee, beneficiary, or authorized agent. The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency. The mortgage servicer has not made contact despite such due diligence. Thirty (30) days, or more, have passed since these due diligence efforts were satisfied. **(mark box 2 on the attached “Declaration of Mortgage Servicer.”)**
3.  No contact was required by the mortgage servicer because the individual did not meet the definition of “borrower” pursuant to section “B” above. **(mark box 3 on the attached “Declaration of Mortgage Servicer.”)**
4.  The pre-foreclosure “due diligence” requirements of Cal. Civil Code § 2923.5 do not apply because the loan is not secured by a first deed of trust **OR** first deed of trust that encumbers real property that is owner-occupied residential real property containing no more than four dwelling units and is security for a loan made for personal, family, or household purposes. **(mark box 4 on the attached “Declaration of Mortgage Servicer.”)**
5.  The pre-foreclosure “due diligence” requirements of Cal. Civil Code § 2923.5 do not apply because the borrower 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. **(mark box 3 on the attached “Declaration of Mortgage Servicer.”)**

**D. Mortgage servicer certification of compliance with Civil Code § 2924.18 “Dual Tracking”.** “Dual Tracking” is basically any foreclosure action taken while a borrower is working on a foreclosure prevention alternative. Dual Tracking only applies to first deeds of trust where the security is “owner-occupied”.

1.  The borrower has not submitted to the mortgage servicer a complete application for a first lien loan modification offered by, or through, the borrower’s mortgage servicer.
2.  No foreclosure prevention alternative has been approved in writing by **all** parties, including, for example, the first lien investor, any junior lienholder, and any mortgage insurer, as applicable.
3.  The mortgage servicer has entered into a foreclosure prevention alternative with the borrower which was approved in writing but the borrower is *not* in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.
4.  Civil Code § 2924.18 “Dual Tracking” does not apply because the loan is not secured by a first lien deed of trust **OR** first deed of trust that encumbers real property that is owner-occupied residential real property containing no more than four dwelling units and is security for a loan made for personal, family, or household purposes.

**E. Mortgage servicer’s authority to initiate a foreclosure and review of borrower’s file.**

1.  I certify, after a review of the mortgage servicer’s file, that each statement in this declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower’s default and the right to foreclose,

including the borrower's loan status and loan information. I further certify that I have reviewed the contents of the attached documents referenced above and have determined that they are accurate, complete and supported by competent and reliable evidence. Civil Code § 2924.17(b) requires that 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.*

***Substitution of Trustee required before recording a Notice of Default (Blank Substitution attached – we will fill in the deed of trust and recording info.)***

2.  Pursuant to Civil Code § 2924(a)(6), the mortgage servicer represents that it has authority on behalf of the holder of the beneficial interest to enforce the deed of trust and to take actions reasonably necessary to initiate and conclude the foreclosure including, but not limited to, retaining a trustee, authorizing the processing and recording of a notice of default, assignment(s) of deed of trust, substitution of trustee, and notice of sale; conducting a trustee's sale and recording a trustee's deed upon sale; authorizing the trustee to employ other agents to assist in processing the foreclosure and to distribute any surplus funds that may result from a trustee's sale as provided by the deed of trust and by law. (Civil Code Section 2924(a)(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.*")

## **F. DECLARATION OF DEFAULT**

### **AGENCY AGREEMENT/INSTRUCTIONS AND AUTHORIZATION TO FORECLOSING AGENT**

The undersigned, as Beneficiary/Mortgage Servicer or authorized agent for the beneficiary, hereby makes the following representations, each of which is material to and will be relied upon by Golden West Foreclosure Service, Inc. (GWFS), in performing the services described herein:

1. That a default has occurred on the subject loan and that the reason for the default, the specific amounts and terms causing said default, and all other information about the loan has been accurately relayed to GWFS.
2. The undersigned has no knowledge of any bankruptcy proceeding affecting the trustor or successor owner of the subject property and the undersigned will immediately inform GWFS in writing of any knowledge or notice of any such proceeding received.
3. The undersigned will immediately inform GWFS in writing of any further advances made or any subsequent payments received.
4. The undersigned has complied with all notification provisions pursuant to the terms and conditions of the Note and Deed of Trust.
5. The undersigned has provided to GWFS all known mailing addresses for the current property owners.
6. The undersigned has possession of original documents and, if not tendered herewith, will produce them upon demand.
7. That it is understood that a \$150.00 cancellation fee will be charged if the foreclosure is cancelled prior to the recording of the Notice of Default.
8. That, to the best of the undersigned's knowledge, the present owner of the subject property is not entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.
9. That it is understood that GWFS is not responsible for the monitoring of any senior liens and encumbrances; therefore GWFS is not liable for any actions taken by senior lienholders that may affect your lien.

**G. The undersigned, further directs GWFS to act as its agent in all respects, including but not limited to complete a non-judicial foreclosure sale and, without limiting other acts, specifically authorizes GWFS as follows:**

1. To sign and record a Substitution of Trustee, Notice(s) of Default, Assignment(s) of Deed of Trust.
2. To order a Trustee's Sale Guarantee and to include the charge therefore as part of the Trustee's fees and expenses.
3. To post and publish a Notice of Trustee's Sale and to include the charges therefore as part of the Trustee's fees and expenses.
4. To conduct and/or postpone a Trustee's Sale. To prepare and mail notices of postponement as the authorized agent of the beneficiary/mortgage servicer.
5. If necessary, to order & obtain figures from senior lienholders.

GWFS shall be entitled to act pursuant to this authorization unless and until the undersigned gives written notice to GWFS countermanding or canceling this Agreement, which shall be effective only from the date of receipt of such notice, and upon paying any and all amounts due GWFS. Until GWFS has been paid in full, GWFS shall have a lien on the Note and Deed of Trust in an amount equal to any amounts due GWFS. Should GWFS ascertain that certain facts have arisen or have been suppressed, or information is received which would necessitate the canceling of the file, the undersigned hereby authorizes GWFS to do so without any liability to GWFS and without approval from the undersigned. "I/we hereby certify that I/we have read and understood this Agreement. I/we also certify that I/we am/are the Beneficiary/Mortgage Servicer or authorized agent for the beneficiary under the subject Deed of Trust and, as such, have legal authority to commit each Beneficiary to the payment of his or her proportionate share of the total charges, costs, and expenses to perform the Foreclosure. It is agreed and understood that GWFS may not proceed with the Trustee's Sale and/or deliver a Trustee's Deed until all fees and costs have been paid. I/we also agree to indemnify, defend with GWFS choice of counsel and hold GWFS harmless from and against all costs, damages, attorney's fees, expenses, obligations and liabilities of any kind which GWFS may incur or sustain by reason of the invalidity or unenforceability of the lien, or claim thereof, which arises out of this transaction and is based upon usury or any consumer credit protection or truth in lending law (including but not limited to AB 278 & SB 900). The undersigned hereby agrees to indemnify, defend with GWFS choice of counsel and hold GWFS harmless from any and all liability, costs and damages, including attorney's fees and costs incurred in responding to any allegations and/or defending any type of action naming GWFS as a defendant which might arise during the course or subsequent to GWFS's execution of its duties hereunder. I/we also agree to pay on demand, as well as indemnify, defend with GWFS choice of counsel and hold GWFS harmless from and against all costs, damages, attorney's fees, expenses, obligations and liabilities of any kind which GWFS may incur or sustain by reason of this default and foreclosure proceeding and/or the sale of the property by reason of any act or omission or commission on the part of others and the undersigned, for whom GWFS is acting as agent.

**BY:** \_\_\_\_\_

**SIGNATURE OF LENDER/BENEFICIARY/MORTGAGE SERVICER**

**DATE**

Gramm-Leach-Bliley Privacy Provisions Agreement - As used in this Agreement, "Customer Information" shall mean any and all information that identifies, pertains to, or references a customer or customers, including but not limited to customer names, account numbers, addresses, telephone numbers, and social security numbers. We do not disclose to anyone or use for any purpose any Customer Information other than to carry out the purposes for which the Customer Information was obtained except as may be expressly permitted by the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq.

## Declaration of Mortgage Servicer Pursuant to Civil Code §2923.5(b)

Borrower(s):  
Property Address:  
T.S. No.:

The undersigned, as an authorized agent or employee of the mortgage servicer named below, declares that:

1.  The mortgage servicer has contacted the borrower pursuant to California Civil Code § 2923.5(a)(2) "to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more, have passed since the initial contact was made.
2.  Despite the exercise of due diligence pursuant to California Civil Code § 2923.5(e), the mortgage servicer has been unable to contact the borrower "to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.
3.  No contact was required by the mortgage servicer because the individual(s) did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.
4.  The requirements of Cal. Civil Code § 2923.5 do not apply because the loan is not secured by a first mortgage or first deed of trust that secures a loan, or that encumbers real property, described in Civil Code § 2924.15(a).

I certify that this declaration is accurate, complete and supported by competent and reliable evidence which the mortgage servicer has reviewed to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

Dated: \_\_\_\_\_

\_\_\_\_\_  
By:  
Mortgage Servicer

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

GOLDEN WEST FORECLOSURE SERVICE, INC.  
805 Veterans Blvd., Suite 218  
Redwood City, CA 94063

Trustee's Sale No.:

Space above this line for recorder's use only

### SUBSTITUTION OF TRUSTEE

WHEREAS, \_\_\_\_\_, was the original Trustor,  
\_\_\_\_\_, was the original Trustee, and  
\_\_\_\_\_, was the original Beneficiary under that certain Deed of Trust dated  
\_\_\_\_\_, Recorded on \_\_\_\_\_, Instrument No.: \_\_\_\_\_ of official records in the office of the  
Recorder of \_\_\_\_\_ County, California, and

WHEREAS, \_\_\_\_\_, the undersigned, is the present  
Beneficiary under said Deed of Trust, and,  
WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in the place of and  
stead of said original Trustee thereunder.  
Now, THEREFORE, the undersigned Beneficiary hereby substitutes **GOLDEN WEST FORECLOSURE  
SERVICE, INC.**, as Trustee of Said Deed of Trust.  
Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the  
singular number indicates the plural.

DATE:

\_\_\_\_\_

By:

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared  
\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the  
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I  
certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is  
true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## REQUEST TO PREPARE NOTICE OF DEFAULT

LENDER/BENEFICIARY/Mortgage Servicer or authorized agent for the beneficiary:

CONTACT/SERVICER:

ADDRESS/CITY, STATE ZIP:

PHONE NO./FAX NO./EMAIL:

LOAN SPECIFICATIONS:

Your Loan Number: \_\_\_\_\_ Lien Position: \_\_\_ 1<sup>st</sup> \_\_\_ 2<sup>nd</sup> \_\_\_ 3<sup>rd</sup> \_\_\_ other

ORIGINAL LOAN AMOUNT: \_\_\_\_\_ CURRENT PRINCIPAL BALANCE: \_\_\_\_\_

CURRENT INTEREST RATE: \_\_\_\_\_ LOAN MATURITY DATE: \_\_\_\_\_

Property Address:

Current Trustor (borrower):

Social Security No.:

### PLEASE FIND ENCLOSED THE FOLLOWING DOCUMENTS:

<input checked="" type="checkbox"/> Note	<input type="checkbox"/> Copy of Payment History	Is the Senior Lien Delinquent	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
<input checked="" type="checkbox"/> Deed of Trust	<input type="checkbox"/> Security Agreement	Are Taxes Delinquent	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
<input type="checkbox"/> Assignment	<input type="checkbox"/> Copy of Letter of Intent	Has Bankruptcy ever been filed	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
<input type="checkbox"/> Extensions	<input type="checkbox"/> Modification Agreement	Is the property vacant land	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Is this foreclosure to include personal property (Commercial Code Unified Sale)			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown

### DEFAULT HAS OCCURRED DUE TO: (please complete or attach your own figures)

\_\_\_ 1. Failure to make the \_\_\_\_\_ (due date) payment of principal and/or interest and all subsequent payments, together with late charges and impounds, if applicable.

\_\_\_ 2. The unpaid principal balance of \$ \_\_\_\_\_, has become all due and payable under the terms of the Promissory Note with interest thereon at \_\_\_\_\_% from \_\_\_\_\_.

\_\_\_ 3. Failure to: \_\_\_\_\_  
(ie. pay senior lienholder, taxes, insurance).

Number of delinquent installments: \_\_\_\_\_ @ \_\_\_\_\_ = \$ \_\_\_\_\_

Number of late charges: \_\_\_\_\_ @ \_\_\_\_\_ = \$ \_\_\_\_\_

Advances to prior Deed of Trust: Date: \_\_\_\_\_ \$ \_\_\_\_\_

Advances for Taxes/Insurance: Date: \_\_\_\_\_ \$ \_\_\_\_\_

Other: Date: \_\_\_\_\_ \$ \_\_\_\_\_

**Total:** \$ \_\_\_\_\_

**Please list the last known address of the Trustor** (if different from the property address):

If this loan has been turned over to a Servicer or Collection Agency, please provide the name and phone number:

Please list the name, address, phone number and loan number (if known) of any Senior Lien holder: