

GOOD NEWS FOR HOME OWNERS

A new law enacted on July 8, 2008, now requires Lenders of residential loans in the State of California to accept loan modifications in most foreclosure situations. California Civil Code 2923.6 went into effect on July, 2008, and applies to all residential loans made from January 1, 2003, to December 31, 2007, inclusive, that are secured by residential real property and are for owner-occupied residences.

Practically all residential mortgages have Pooling and Servicing Agreements (“PSA”) since they were transferred to various Mortgage Backed Security Trusts after origination. These vehicles likewise almost always contain a duty to maximize net present value to its investors and related parties. Under the new laws, California Civil Code 2823.6 broadens and extends this PSA duty by requiring servicers to accept loan modifications with borrowers.

Essentially, California Civil Code 2823.6(a) states that *“a servicer acts in the best interest of all parties if it agrees to or implements a loan modification where the (1) loan is in payment default, and (2) anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.”* Likewise, California Civil Code 2823.6(b) now provides *“that the mortgagee, beneficiary, or authorized agent offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.”*

Pursuant to California Civil Code 2823.6, the lender is now contractually bound to accept the loan modification as provided above.