

RESIDENTIAL

This One Goes Out To All Those Single (Points of Contact) Out There: 3 Not-So-Simple Rules

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Much like the dating world, the world of mortgage servicing in light of California's Homeowner Bill of Rights ("HBOR") single point of contact ("SPOC") rules can be a confusing place akin to the wild west. Communications can be misconstrued, arguments can ensue about who should be doing what, and finding the right solution can be difficult, especially in the glaring absence of unity from the courts on what HBOR means. Unfortunately, while there is a cacophony of dating advice, there is little guidance on what it means to be a single (point of contact) in today's servicing world.

With the passage of HBOR, borrowers were "guarantee[d] [a] single point of contact [to borrowers] as they navigate the system and try to keep their homes – a person or team at the bank who knows the facts of their case, has their paperwork and can get them a decision about their application for a loan modification."¹

A partner who can navigate, keeps a home, knows all about you, is well organized, and decisive? In the dating world, this person is called Mr./Mrs. Right. Determining what it means for a person to be all of these things is much more complicated than it sounds and, in the SPOC context, represents an area of

law so unclear that judges hesitate to dismiss SPOC claims. Hence the importance of understanding what the SPOC rules are, and why SPOC claims aren't going away anytime soon, cannot be understated.

RULE 1: DON'T WAIT FOR HIM/HER TO CALL...OR DO.

In the dating world, there is much debate about whether you should wait for the other person to call first. Not surprisingly, that same debate continues in HBOR.

HBOR requires a SPOC be appointed "upon request from a borrower who requests a foreclosure prevention alternative[.]"² The plain language suggests a borrower must both (1) request a foreclosure prevention alternative; and (2) request a single point of contact.

However, California courts are split on this with some courts finding any borrower who requests a foreclosure prevention alternative must be appointed a SPOC³; while other courts find a borrower must actually request a SPOC unless they are told they will be assigned one.⁴

RULE 2: AVOID SPEED DATING...MAYBE.

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Speed dating is cited as a way to meet a large number of daters in a short period of time. It is also often criticized as a tiring process that shuffles daters amongst numerous others who often have little interest in each other.

Not surprisingly, in the context of SPOCs, “shunt[ing]’ Plaintiffs around among [numerous] ‘personnel .. who had no interest in’ helping Plaintiffs with a loan modification, in order to wear them down” is looked upon with disfavor.⁵

While appointing a SPOC need not be a marriage made in heaven and SPOCs can change⁶ (or even been a “team of personnel”⁷), numerous changes in a borrower’s SPOC should be avoided,⁸ and those changes should not result in a SPOC who “lack[s] the knowledge and authority” required under Section 2923.7(b).^{9, 10}

RULE 3: AVOID MATERIAL PROBLEMS...OR FIX THEM.

In dating, many try to avoid material obsessed individuals. With SPOC claims, however, obsessing over materiality pays huge dividends.

Violations of the SPOC requirements are only actionable if the violation was “material.”¹¹ A technical violation alone is not enough.¹² Rather, to be actionable, borrowers should have to prove an alleged SPOC violation has caused some secondary harm or prejudice to them.¹³ Prejudice is not presumed from “mere irregularities” in the process.¹⁴ While this law is in flux and subject to varying interpretations, the general idea is this: a servicer’s SPOC practice should not deprive borrowers

of anything they would have otherwise gotten had that practice fully complied with the law.

Nonetheless, even material violations can be fixed. Mortgage servicers are not “liable for any violation that it has corrected and remedied prior to” foreclosure,¹⁵ by, for example, postponing the foreclosure sale.¹⁶

CONCLUSION

SPOCs live in the wild west. Whether a SPOC violation exists depends largely on which the judge and which District Court that judge adheres to, if any. Interpretations over what constitutes an actionable SPOC claim are the source of much confusion and contradiction within California’s judicial system. As a result, fewer judges are willing to dismiss these claims without the as-of-yet-still-missing guidance from a California appellate court. For now, SPOC claims are here to stay, and it is more important than ever to stay abreast of the law in hopes that the rules of being a single (point of contact) will soon settle down.



1 “California Homeowner Bill of Rights,” California Attorney General Kamala Harris [oag.ca.gov/hbor]
2 California Civil Code §2923.7(a)
3 See e.g., *Pennermon v. Wells Fargo Bank, N.A.* (N.D. Cal. 2014) 2014 WL 2754596
4 See, e.g., *Hendricks v. Wells Fargo Bank, N.A.* (C.D. Cal. 2015) 2015 WL 1644028, at *8; *Garcia v. PNC Mortgage* (N.D. Cal. 2015) 2015 WL 534395, at *5; *Diamos v. Specialized Loan Servicing LLC* (N.D. Cal. 2014) 2014 WL 5810453, at *4; *Williams v. Wells Fargo Bank N.A.* (C.D. Cal. 2014)

2014 WL 1568857, at *8; *Green v. Wells Fargo Bank, N.A.* (N.D. Cal. 2015) 2015 WL 972991, at *3; *Rizk v. Residential Credit Solutions, Inc.* (C.D. Cal. 2015) 2015 WL 573944, at *9
5 *Mora v. U.S. Bank.* (C.D. Cal. 2015) 2015 WL 4537218, at *6.
6 See *Hild v. Bank of America, N.A.* (C.D. Cal. 2015) 2015 WL 1813571, at *7; *Andre v. Bank of America, N.A.* (N.D. Cal. 2014) 2014 WL 6895240, at *5; *Boring v. Nationstar Mortgage LLC* (E.D. Cal. 2014) 2014 WL 66776, at *4.
7 California Civil Code §2923.7(e)
8 *Rahbarian v. JPMorgan Chase* (E.D. Cal. 2014) 2014 WL 5823103, at *4
9 Section 2923.7 requires the single point of contact be responsible for:
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.” And
6. To transfer “a borrower to an appropriate supervisor upon request of the borrower, if the single point of contact has a supervisor.”
10 *Mann v. Bank of America, N.A.* (C.D. Cal. 2014) 2014 WL 495617, at *4.
11 California Civil Code §2924.12(a)(1), (b)
12 *Johnson v. PNC Mortgage* (N.D. Cal. 2014) 2014 WL 6629585, at *10.
13 *Rahbarian v. JPMorgan Chase* (N.D. Cal. 2015) 2015 WL 854222, at *2.
14 *Herrera v. Federal National Mortgage Association* (2012) 205 Cal. App. 4th 1495, 1507.
15 California Civil Code §2924.12(c)
16 *Ha v. Bank of Am., N.A.* (N.D. Cal. 2014) 2014 WL 3616133, at *7; *Major v. Wells Fargo Bank, N.A.* (S.D. Cal. 2015) 2015 WL 2449516, at *4.