

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 935

Introduced by Assembly Member Blumenfield

February 18, 2011

An act to add Section 27389 to the Government Code, relating to foreclosures, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 935, as amended, Blumenfield. Foreclosures: foreclosure mitigation charges.

Existing law sets forth the criteria for procedures for the foreclosure of property, including the filing of various notices with the county recorder, and generally sets forth the duties of the county recorder in this regard.

This bill would, *with some exceptions*, prohibit a notice of trustee's sale from being accepted for filing with the county recorder until the mortgage servicer pays a foreclosure mitigation charge of \$20,000. It would require the county recorder to keep the moneys in trust until a notice of rescission is filed, at which time the moneys would be returned to the mortgage servicer, or until a trustee deed of sale is filed, at which time the moneys would be transmitted to the Treasurer for deposit in the Foreclosure Mitigation Fund, which would be created by the bill; the interest earned on the moneys would be retained by the county recorder in either case. The fund would be continuously appropriated for distribution by the Treasurer to local agencies for specified purposes.

By imposing a new duty on county recorders in collecting this fee, the bill would impose a state-mandated local program.

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.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
 State-mandated local program: yes.

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

1 SECTION 1. Section 27389 is added to the Government Code,
 2 to read:
 3 27389. (a) ~~Notwithstanding (1)~~ *Notwithstanding Section 23182*
 4 *of the Revenue and Tax Code and any other provision of law, and*
 5 *subject to paragraph (2), no notice of trustee’s sale shall be*
 6 *accepted for filing with the county recorder until the mortgage*
 7 *servicer, as defined in subdivision (q) of Section 50003 of the*
 8 *Financial Code, pays a foreclosure mitigation charge of twenty*
 9 *thousand dollars (\$20,000). The cost of this charge may not be*
 10 *passed on to borrowers.*
 11 (2) (A) *A mortgage servicer shall be exempt from paying the*
 12 *foreclosure mitigation charge described in paragraph (1) if it is*
 13 *servicing a loan for a mortgage lender with assets below ten billion*
 14 *dollars (\$10,000,000,000). In addition, a mortgage servicer shall*
 15 *be exempt from paying the foreclosure mitigation charge for any*
 16 *loans owned by any local or state government agency, as the intent*
 17 *of this section is to recoup some of the foreclosure costs currently*
 18 *being borne by the taxpayers of this state.*
 19 (B) *If a mortgage servicer is exempt from paying the foreclosure*
 20 *mitigation charge pursuant to subparagraph (A), the mortgage*
 21 *servicer shall furnish a document to the county recorder when*
 22 *filing the notice of sale indicating that the loan is owned by a*
 23 *mortgage lender with assets below ten billion dollars*
 24 *(\$10,000,000,000) or that the loan is owned by a local or state*
 25 *government agency and therefore exempt from the foreclosure*
 26 *mitigation charge.*

1 (b) (1) The county recorder shall hold the moneys collected
2 pursuant to subdivision (a) in trust until either of the following
3 occurs:

4 (A) If a notice of rescission is filed with respect to the property,
5 the county recorder shall return the moneys to the mortgage
6 servicer, except as provided in paragraph (2).

7 (B) If a trustee deed upon sale is filed with respect to the
8 property, and except as provided in paragraph (2) the county
9 recorder shall transmit the moneys to the Treasurer for deposit in
10 the Foreclosure Mitigation Fund, which is hereby established as
11 a special fund in the State Treasury.

12 (2) The county recorder may retain any interest earned while
13 the moneys were held in trust pursuant to this subdivision, to cover
14 administrative costs.

15 (c) (1) Moneys in the Foreclosure Mitigation Fund are hereby
16 continuously appropriated for distribution by the Treasurer to local
17 agencies, in the same amount as the applicable counties' respective
18 deposits.

19 (2) Moneys distributed to local agencies pursuant to this
20 subdivision shall be used as follows:

21 (A) Twenty percent for K-12 and community college purposes.

22 (B) Twenty percent for public safety purposes, including, but
23 not limited to, local police, county sheriffs, and local fire
24 protection.

25 (C) Twenty percent for redevelopment activities within the
26 jurisdiction of the local agency, including, but not limited to, the
27 construction of affordable housing.

28 (D) Twenty percent for mitigating the effects of foreclosures
29 on the community, including, but not limited to, reimbursement
30 of the county recorder's costs in collecting the charge imposed
31 pursuant to subdivision (a).

32 (E) Twenty percent for loans for small businesses within the
33 jurisdiction of the local agency.

34 SEC. 2. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 a local agency or school district has the authority to levy service
37 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

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