

ASSEMBLY BILL

No. 244

**Introduced by Assembly Member Eggman
(Coauthor: Assembly Member Brown)**

February 9, 2015

An act to amend Section 2920.5 of the Civil Code, relating to mortgages and deeds of trust.

LEGISLATIVE COUNSEL'S DIGEST

AB 244, as introduced, Eggman. Mortgages and deeds of trust: successors in interest.

Existing law imposes various requirements to be satisfied prior to exercising a power of sale under a mortgage or deed of trust. Existing law defines a mortgage servicer as a person or entity who directly services a loan, or is responsible for interacting with the borrower, and managing the loan account on a daily basis, as specified. Existing law defines a borrower, for purposes of specified provisions relating to mortgages and deeds of trust, as a natural person who is a mortgagor or trustor who is potentially eligible for any federal, state, or proprietary foreclosure prevention alternative program offered by, or through, his or her mortgage servicer.

This bill would include a successor in interest in the definition of a borrower for purposes of the eligibility provisions described above. The bill would define a successor in interest for these purposes as a natural person who provides the mortgage servicer with notification of the death of the mortgagor or trustor and reasonable documentation, as specified, showing that the person falls into one of four categories of successors, including a personal representative of the mortgagor's or trustor's estate or a surviving spouse, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 2920.5 of the Civil Code, as added by
2 Section 2 of Chapter 87 of the Statutes of 2012, is amended to
3 read:

4 2920.5. For purposes of this article, the following definitions
5 apply:

6 (a) “Mortgage servicer” means a person or entity who directly
7 services a loan, or who is responsible for interacting with the
8 borrower, managing the loan account on a daily basis including
9 collecting and crediting periodic loan payments, managing any
10 escrow account, or enforcing the note and security instrument,
11 either as the current owner of the promissory note or as the current
12 owner’s authorized agent. “Mortgage servicer” also means a
13 subservicing agent to a master servicer by contract. “Mortgage
14 servicer” shall not include a trustee, or a trustee’s authorized agent,
15 acting under a power of sale pursuant to a deed of trust.

16 (b) “Foreclosure prevention alternative” means a first lien loan
17 modification or another available loss mitigation option.

18 (c) (1) (A) Unless otherwise provided and for purposes of
19 Sections 2923.4, 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10,
20 2924.11, 2924.18, and 2924.19, “borrower” means any natural
21 person who is a mortgagor or trustor, *or who is the successor in*
22 *interest to the mortgagor or trustor following the death of the*
23 *mortgagor or trustor*, and who is potentially eligible for any
24 federal, state, or proprietary foreclosure prevention alternative
25 program offered by, or through, his or her mortgage servicer.

26 (B) *For purposes of this subdivision:*

27 (i) “Successor in interest” means a natural person who provides
28 the mortgage servicer with notification of the death of the
29 mortgagor or trustor and reasonable documentation showing that
30 the person is one of the following:

31 (I) *The personal representative, as defined in Section 58 of*
32 *Probate Code, of the mortgagor’s or trustor’s estate.*

33 (II) *The surviving joint tenant of the mortgagor or trustor.*

34 (III) *The surviving spouse of the mortgagor or trustor if the real*
35 *property that secures the mortgage or deed of trust was held as*

1 *community property with right of survivorship pursuant to Section*
2 *682.1 of the Civil Code.*

3 *(IV) The trustee of the trust that owns the real property that*
4 *secures the mortgage or deed of trust or the beneficiary of that*
5 *trust.*

6 *(ii) "Notification of the death of the mortgagor or trustor"*
7 *means provision to the mortgage servicer of a death certificate*
8 *or, if a death certificate is not available, of other written evidence*
9 *of the death of the mortgagor or trustor deemed sufficient by the*
10 *mortgage servicer.*

11 *(iii) "Reasonable documentation" means copies of the following*
12 *documents, as may be applicable, or, if the relevant documentation*
13 *listed is not available, other written evidence of the person's status*
14 *as successor in interest to the real property that secures the*
15 *mortgage or deed of trust deemed sufficient by the mortgage*
16 *servicer:*

17 *(I) In the case of a personal representative, letters as defined*
18 *in Section 52 of Probate Code.*

19 *(II) In the case of a surviving joint tenant, an affidavit of death*
20 *of the joint tenant or a grant deed showing joint tenancy.*

21 *(III) In the case of a surviving spouse where the real property*
22 *was held as community property with right of survivorship, an*
23 *affidavit of death of the spouse or a deed showing community*
24 *property with right of survivorship.*

25 *(IV) In the case of a trustee of a trust, a certification of trust*
26 *pursuant to 18100.5 of the Probate Code.*

27 *(V) In the case of a beneficiary of a trust, relevant trust*
28 *documents related to the beneficiary's interest.*

29 *(C) Designation of a successor in interest as a borrower for*
30 *purposes of this subdivision does not impose an affirmative duty*
31 *on a mortgage servicer to offer a loan modification to, or accept*
32 *an assumption of the loan by, the successor in interest and does*
33 *not alter any obligation the mortgage servicer may otherwise have*
34 *to accept an assumption of the loan by the successor in interest.*
35 *If a successor in interest assumes the loan, he or she may be*
36 *required to otherwise qualify for available foreclosure prevention*
37 *alternatives offered by the mortgage servicer.*

38 *(2) For purposes of the sections listed in paragraph (1),*
39 *"borrower" shall not include any of the following:*

1 (A) An individual who has surrendered the secured property as
2 evidenced by either a letter confirming the surrender or delivery
3 of the keys to the property to the mortgagee, trustee, beneficiary,
4 or authorized agent.

5 (B) An individual who has contracted with an organization,
6 person, or entity whose primary business is advising people who
7 have decided to leave their homes on how to extend the foreclosure
8 process and avoid their contractual obligations to mortgagees or
9 beneficiaries.

10 (C) An individual who has filed a case under Chapter 7, 11, 12,
11 or 13 of Title 11 of the United States Code and the bankruptcy
12 court has not entered an order closing or dismissing the bankruptcy
13 case, or granting relief from a stay of foreclosure.

14 (d) “First lien” means the most senior mortgage or deed of trust
15 on the property that is the subject of the notice of default or notice
16 of sale.