

Introduced by Senator Leno

February 18, 2016

An act to add Section 2920.7 to the Civil Code, relating to mortgages and deeds of trust.

LEGISLATIVE COUNSEL'S DIGEST

SB 1150, as amended, Leno. Mortgages and deeds of trust: mortgage servicers and lenders: 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 gives a borrower, as defined, various rights and remedies against a mortgage servicer, mortgagee, trustee, beneficiary, and authorized agent in regards to foreclosure prevention alternatives, as defined, including loan modifications, which is commonly referred to as being part of the California Homeowner Bill of Rights.* 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.

This bill would prohibit a mortgage servicer or lender, as defined, upon notification that a borrower has died, from recording a notice of default ~~for at least 30 days after~~ *until the mortgage servicer or lender does certain things, including* requesting reasonable documentation of the death of the borrower from ~~the successor in interest, as defined.~~ *The bill would require the mortgage servicer or lender to, among other things, contact the successor in interest in person or by telephone in order to assess the successor's financial situation and explore options for the successor to avoid foreclosure, provide the successor in interest*

~~with information about loan assumption options and foreclosure avoidance programs, and allow a successor in interest to simultaneously apply to assume the deceased borrower's loan and to apply to receive a loan modification. The bill would authorize a successor in interest or the Attorney General to bring an action to enforce these provisions, as provided.~~ *a claimant, which is someone claiming to be a successor in interest, that is not a party to the loan or promissory note and providing a reasonable period of time for the claimant to present the requested documentation. The bill would deem a claimant a successor in interest, as defined, upon receipt by a mortgage servicer or lender of the reasonable documentation regarding the status of the claimant. The bill would require a mortgage servicer or lender, within 10 days of a claimant being deemed a successor in interest, to provide the successor in interest with information about the loan, as specified. The bill would require a mortgage servicer or lender to allow a successor in interest to either assume the deceased borrower's loan, except as specified, or to apply for foreclosure prevention alternatives on an assumable loan, as specified. The bill would provide that a successor in interest who assumes an assumable loan and wishes to apply for a foreclosure avoidance alternative has the same rights and remedies as a borrower under specified provisions of the California Homeowner Bill of Rights. The bill would authorize a successor in interest to bring an action for injunctive relief to enjoin a material violation of specified provisions of law and would authorize a court to award a prevailing successor in interest reasonable attorney's fees and costs for such an action. The bill would define terms for these purposes and make various findings and declarations.*

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

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

- 1 *SECTION 1. The Legislature hereby declares all of the*
- 2 *following:*
- 3 *(a) Beginning in 2008, California faced a foreclosure crisis,*
- 4 *with rapidly dropping home values and skyrocketing job losses.*
- 5 *Indiscriminate foreclosure practices of major mortgage servicers*
- 6 *compounded the problem as they created a labyrinth of red tape,*
- 7 *lost documents, and erroneous information and then they started*

1 foreclosure proceedings while borrowers and their families were
2 in the middle of applying for a loan modification.

3 (b) The California Legislature responded with a
4 first-in-the-nation Homeowner Bill of Rights (HBOR), which
5 requires mortgage servicers to provide borrowers a fair and
6 transparent process, a single point of contact, and the opportunity
7 to finish applying for a loan modification before foreclosure
8 proceedings can start. HBOR stabilized families, neighborhoods,
9 and local communities by slowing down indiscriminate
10 foreclosures.

11 (c) Now, however, district attorneys and legal aid organizations
12 are reporting an increasing number of cases in which mortgage
13 servicers use a loophole in HBOR to foreclose on certain
14 homeowners—people who survive the death of a borrower and
15 have an ownership interest in the home but are not named on the
16 mortgage loan. Most often, the “survivor” is the borrower’s spouse
17 and is over 65 years of age.

18 (d) When the surviving widow or widower, domestic partner,
19 children, or other heirs attempt to obtain basic information about
20 the loan from the servicer, they face the same kind of barriers and
21 abuses—and, finally foreclosure—that convinced the Legislature
22 to pass HBOR.

23 (e) Home ownership is the primary avenue for most Americans
24 to build generational wealth. Indiscriminate foreclosures on
25 surviving heirs destroy a family’s ability to build for its financial
26 future. Foreclosures also exacerbate the racial wealth gap—and
27 overall wealth inequality—in society, and force seniors who want
28 to “age in place” into the overheated rental market instead, with
29 devastating health impacts.

30 (f) Surviving heirs deserve the same transparency and
31 opportunity to save their home as HBOR gave the original
32 borrower. This act would stem a disturbing nationwide trend and
33 help keep widows and widowers, children, and other survivors in
34 their homes—without requiring mortgage servicers to do anything
35 more than they already do for other homeowners.

36 **SECTION 1.**

37 **SEC. 2.** Section 2920.7 is added to the Civil Code, to read:

38 2920.7. (a) Upon notification by someone claiming to be a
39 successor in interest that a borrower has died, and where a
40 ~~successor in interest~~ that claimant is not a party to the loan or

1 promissory note, a mortgage servicer or lender shall not record a
2 notice of default pursuant to Section 2924 until ~~that the mortgage~~
3 ~~servicer or lender does all~~ *both* of the following:

4 (1) Requests reasonable documentation of the death of the
5 borrower from the ~~successor in interest, claimant~~, including, but
6 not limited to, a ~~death certification certificate~~ or other written
7 evidence of the death of the borrower. *A reasonable period of time*
8 *shall be provided for the claimant to present this documentation,*
9 *but no less than 30 days from the date of a written request by the*
10 *mortgage servicer.*

11 (2) Requests reasonable documentation of the status of a
12 ~~successor in interest claimant~~ as such, and that ~~successor's~~
13 ~~claimant's~~ interest ~~relation to~~ in the real property. *A reasonable*
14 *period of time shall be provided for the claimant to present this*
15 *documentation, but no less than 90 days from the date of a written*
16 *request by the mortgage servicer.*

17 (3) ~~Allows at least 30 days after receiving the information in~~
18 ~~paragraph (1) before taking any further action on the loan.~~

19 (4) ~~Allows a successor in interest to simultaneously apply to~~
20 ~~assume the deceased borrower's loan and to apply to receive a~~
21 ~~loan modification.~~

22 (5) ~~Provides the successor in interest with a single point of~~
23 ~~contact and provides the successor one or more direct means of~~
24 ~~communication with the single point of contact.~~

25 (6) (A) ~~Provides the successor in interest with information~~
26 ~~about loan assumption options and foreclosure avoidance programs.~~

27 (B) ~~The information in subparagraph (A) shall be provided in~~
28 ~~Spanish, Chinese, Tagalog, Vietnamese, and Korean and shall~~
29 ~~include a list of counselors certified by the United States~~
30 ~~Department of Housing and Urban Development (HUD) that the~~
31 ~~successor may contact for assistance.~~

32 (7) (A) ~~Contacts the successor in interest in person or by~~
33 ~~telephone in order to assess the successor's financial situation and~~
34 ~~explore options for the successor to avoid foreclosure. During the~~
35 ~~initial contact, the mortgage servicer or lender shall advise the~~
36 ~~successor that he or she has the right to request a subsequent~~
37 ~~meeting and, if requested, the mortgage servicer or lender shall~~
38 ~~schedule the meeting to occur within 14 days. The assessment of~~
39 ~~the successor's financial situation and discussion of options may~~
40 ~~occur during the first contact, or at the subsequent meeting~~

1 scheduled for that purpose. In either case, the successor shall be
2 provided the toll-free telephone number made available by HUD
3 to find a HUD-certified housing counseling agency. Any meeting
4 may occur telephonically.

5 (B) A mortgage servicer's or lender's loss mitigation personnel
6 may participate by telephone during any contact required by this
7 section.

8 (C) A successor in interest may designate, with consent given
9 in writing, a HUD-certified housing counseling agency, attorney,
10 or other advisor to discuss with the mortgage servicer or lender,
11 on the successor's behalf, the successor's financial situation and
12 options for the successor to avoid foreclosure. That contact made
13 at the direction of the successor shall satisfy the contact
14 requirements of this paragraph. Any loan modification or workout
15 plan offered at the meeting by the mortgage servicer or lender is
16 subject to approval by the successor.

17 (8) If a mortgage servicer or lender is unable to contact a
18 successor in interest pursuant to paragraph (7), the mortgage
19 servicer or lender shall alternatively do all of the following:

20 (A) Attempt to contact a successor in interest by sending a
21 first-class letter that includes the toll-free telephone number made
22 available by HUD to find a HUD-certified housing counseling
23 agency.

24 (B) (i) After the letter has been sent, the mortgage servicer or
25 lender shall attempt to contact the borrower by telephone at least
26 three times at different hours and on different days. Telephone
27 calls shall be made to the primary telephone number on file.

28 (ii) A mortgage servicer or lender may attempt to contact a
29 successor in interest using an automated system to dial successors
30 in interest, provided that, if the telephone call is answered, the call
31 is connected to a live representative of the mortgage servicer or
32 lender.

33 (iii) A mortgage servicer or lender satisfies the telephone contact
34 requirements of this subparagraph if it determines, after attempting
35 contact pursuant to this subparagraph, that the successor's primary
36 telephone number and secondary telephone number or numbers
37 on file, if any, have been disconnected.

38 (C) If the successor in interest does not respond within two
39 weeks after the telephone call requirements of subparagraph (B)

1 have been satisfied, the mortgage servicer or lender shall then send
2 a certified letter, with return receipt requested.

3 ~~(D) Provide a means for the successor in interest to contact it~~
4 ~~in a timely manner, including a toll-free telephone number that~~
5 ~~will provide access to a live representative during business hours.~~

6 ~~(E) Post a prominent link on the homepage of its Internet Web~~
7 ~~site, if any, to the following information:~~

8 ~~(i) Options that may be available to a successor in interest to~~
9 ~~avoid foreclosure, and instructions to a successor advising him or~~
10 ~~her on steps to take to explore those options.~~

11 ~~(ii) A list of financial documents successor in interest should~~
12 ~~collect and be prepared to present to the mortgage servicer or lender~~
13 ~~when discussing options for avoiding foreclosure.~~

14 ~~(iii) A toll-free telephone number for a successor in interest who~~
15 ~~wishes to discuss options for avoiding foreclosure with a mortgage~~
16 ~~servicer or lender.~~

17 ~~(iv) The toll-free telephone number made available by HUD to~~
18 ~~find a HUD-certified housing counseling agency.~~

19 *(b) (1) Upon receipt by the mortgage servicer of the reasonable*
20 *documentation of the status of a claimant as successor in interest*
21 *and that claimant's relation to the real property, that claimant*
22 *shall be deemed a "successor in interest."*

23 *(2) There may be more than one successor in interest.*

24 *(3) Being a successor in interest under this section does not*
25 *impose an affirmative duty on a mortgage servicer or lender or*
26 *alter any obligation the mortgage servicer or lender has to provide*
27 *a loan modification to the successor in interest. If a successor in*
28 *interest assumes the loan, he or she may be required to otherwise*
29 *qualify for available foreclosure prevention alternatives offered*
30 *by the mortgage servicer or lender.*

31 *(c) Within 10 days of a claimant being deemed a successor in*
32 *interest pursuant to subdivision (b), a mortgage servicer or lender*
33 *shall provide the successor in interest with information in writing*
34 *about the loan. Such information shall include, at a minimum, loan*
35 *balance, interest rate and interest reset dates and amounts, balloon*
36 *payments if any, prepayment penalties if any, default or*
37 *delinquency status, the monthly payment amount, and payoff*
38 *amounts.*

39 *(d) A mortgage servicer or lender shall allow a successor in*
40 *interest to either:*

1 (1) Assume the deceased borrower's loan, unless such
2 assumption is prohibited by the terms of the loan.

3 (2) Where a successor in interest of an assumable loan also
4 seeks a foreclosure prevention alternative, simultaneously apply
5 to assume the loan and for a foreclosure prevention alternative
6 that is offered by the loan lender or applicable loss mitigation
7 rules. If the successor in interest qualifies for the foreclosure
8 prevention alternative, the servicer or lender shall allow the
9 successor in interest to assume the loan.

10 (e) (1) A successor in interest who is eligible to assume a
11 deceased borrower's outstanding mortgage loan and wishes to
12 apply for a foreclosure avoidance alternative in connection with
13 that loan shall have all the same rights and remedies as a borrower
14 under subdivision (a) of Section 2923.4 and under Sections 2923.5,
15 2923.55, 2923.6, 2923.7, 2924, 2924.6, 2924.9, 2924.10, 2924.11,
16 2924.12, 2924.15, 2924.17, 2924.18, 2924.19, and 2924.20. For
17 the purposes of Section 2924.15, "owner-occupied" means that
18 the property was the principal residence of the deceased borrower
19 and is security for a loan made for personal, family, or household
20 purposes.

21 (2) If a trustee's deed upon sale has not been recorded, a
22 successor in interest may bring an action for injunctive relief to
23 enjoin a material violation of subdivision (a), (b), (c), or (d) of
24 Section 2920.7. Any injunction shall remain in place and any
25 trustee's sale shall be enjoined until the court determines that the
26 mortgage servicer or lender has corrected and remedied the
27 violation or violations giving rise to the action for injunctive relief.
28 An enjoined entity may move to dissolve an injunction based on a
29 showing that the material violation has been corrected and
30 remedied.

31 (3) After a trustee's deed upon sale has been recorded, a
32 mortgage servicer or lender shall be liable to a successor in
33 interest for actual economic damages pursuant to Section 3281
34 resulting from a material violation of subdivision (a), (b), (c), or
35 (d) of Section 2920.7 by that mortgage servicer or lender where
36 the violation was not corrected and remedied prior to the
37 recordation of the trustee's deed upon sale. If the court finds that
38 the material violation was intentional or reckless, or resulted from
39 willful misconduct by a mortgage servicer or lender the court may

1 *award the successor in interest the greater of treble actual damages*
2 *or statutory damages of fifty thousand dollars (\$50,000).*

3 *(4) A court may award a prevailing successor in interest*
4 *reasonable attorney's fees and costs in an action brought pursuant*
5 *to this section. A successor in interest shall be deemed to have*
6 *prevailed for purposes of this subdivision if the successor in interest*
7 *obtained injunctive relief or damages pursuant to this section.*

8 *(5) A mortgage servicer or lender shall not be liable for any*
9 *violation that it has corrected and remedied prior to the*
10 *recordation of the trustee's deed upon sale or that has been*
11 *corrected and remedied by third parties working on its behalf prior*
12 *to the recordation of the trustee's deed upon sale.*

13 *(f) Consistent with their general regulatory authority, and*
14 *notwithstanding subdivisions (b) and (c) of Section 2924.18, the*
15 *Department of Business Oversight and the Bureau of Real Estate*
16 *may adopt regulations applicable to any entity or person under*
17 *their respective jurisdictions that are necessary to carry out the*
18 *purposes of this section.*

19 *(g) The rights and remedies provided by this section are in*
20 *addition to and independent of any other rights, remedies, or*
21 *procedures under any other law. This section shall not be construed*
22 *to alter, limit, or negate any other rights, remedies, or procedures*
23 *provided by law.*

24 ~~(h)~~

25 *(f) For purposes of this section, all of the following definitions*
26 *shall apply:*

27 *(1) "Lender" means a finance lender or broker licensed under*
28 *the California Finance Lenders Law (Division 9 (commencing*
29 *with Section 22000) of the Financial Code), a residential mortgage*
30 *lender licensed under the California Residential Mortgage Lending*
31 *Act (Division 20 (commencing with Section 50000) of the*
32 *Financial Code), a commercial or industrial bank organized under*
33 *the Banking Law (Division 1 (commencing with Section 99) of*
34 *the Financial Code), a savings association organized under the*
35 *Savings Association Law (Division 2 (commencing with Section*
36 *5000) of the Financial Code), and a credit union organized under*
37 *the California Credit Union Law (Division 5 (commencing with*
38 *Section 14000) of the Financial Code).*

39 *(2) "Notification of the death of the mortgagor or trustor" means*
40 *provision to the mortgage servicer of a death certificate or, if a*

1 death certificate is not available, of other written evidence of the
2 death of the mortgagor or trustor deemed sufficient by the mortgage
3 servicer.

4 (2) *“Mortgage servicer or lender” includes a mortgagee,*
5 *trustee, beneficiary, or authorized agent.*

6 (3) “Reasonable documentation” means copies of the following
7 documents, as may be applicable, or, if the relevant documentation
8 listed is not available, other written evidence of the person’s status
9 as successor in interest to the real property that secures the
10 mortgage or deed of trust deemed sufficient by the mortgage
11 servicer:

12 (A) In the case of a personal representative, letters as defined
13 in Section 52 of *the* Probate Code.

14 (B) In the case of a surviving joint tenant, an affidavit of death
15 of the joint tenant or a grant deed showing joint tenancy.

16 (C) In the case of a surviving spouse where the real property
17 was held as community property with right of survivorship, an
18 affidavit of death of the spouse or a deed showing community
19 property with right of survivorship.

20 (D) In the case of a trustee of a trust, a certification of trust
21 pursuant to Section 18100.5 of the Probate Code.

22 (E) In the case of a beneficiary of a trust, relevant trust
23 documents related to the beneficiary’s interest.

24 (4) ~~(A)~~—“Successor in interest” means a natural person who
25 provides the mortgage servicer *or lender* with notification of the
26 death of the mortgagor or trustor and reasonable documentation
27 showing that the person is any of the following:

28 (i)

29 (A) The personal representative, as defined in Section 58 of *the*
30 Probate Code, of the mortgagor’s or trustor’s estate.

31 (B) *The devisee, as defined in Section 34 of the Probate Code,*
32 *or the heir, as defined in Section 44 of the Probate Code, of the*
33 *real property that secures the mortgage or deed of trust.*

34 (C) *The beneficiary of a Revocable Transfer on Death Deed,*
35 *as defined in Section 5608 of the Probate Code.*

36 (ii)

37 (D) The surviving joint tenant of the mortgagor or trustor.

38 (iii)

39 (E) The surviving spouse of the mortgagor or trustor if the real
40 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.

3 (iv)

4 (F) The trustee of the trust that owns the real property that
5 secures the mortgage or deed of trust or the beneficiary of that
6 trust.

7 ~~(B) Designation of a successor in interest for purposes of this~~
8 ~~subdivision does not impose an affirmative duty on a mortgage~~
9 ~~servicer or lender to offer a loan modification to, or accept an~~
10 ~~assumption of the loan by, the successor in interest and does not~~
11 ~~alter any obligation the mortgage servicer or lender may otherwise~~
12 ~~have to accept an assumption of the loan by the successor in~~
13 ~~interest. If a successor in interest assumes the loan, he or she may~~
14 ~~be required to otherwise qualify for available foreclosure~~
15 ~~prevention alternatives offered by the mortgage servicer or lender.~~

16 (e) (1) (A) If a trustee's deed upon sale has not been recorded,
17 a successor in interest may bring an action for injunctive relief to
18 enjoin a material violation of this section.

19 ~~(B) Any injunction shall remain in place and any trustee's sale~~
20 ~~shall be enjoined until the court determines that the mortgage~~
21 ~~servicer or lender has corrected and remedied the violation or~~
22 ~~violations giving rise to the action for injunctive relief. An enjoined~~
23 ~~entity may move to dissolve an injunction based on a showing that~~
24 ~~the material violation has been corrected and remedied.~~

25 ~~(2) After a trustee's deed upon sale has been recorded, a~~
26 ~~mortgage servicer or lender shall be liable to a successor in interest~~
27 ~~for actual economic damages pursuant to Section 3281 resulting~~
28 ~~from a material violation of this section.~~

29 ~~(3) The Attorney General may bring a civil action in the name~~
30 ~~of the people to obtain appropriate equitable and declaratory relief~~
31 ~~whenever the Attorney General has reasonable cause to believe~~
32 ~~that a violation of this section has occurred.~~

33 *SEC. 3. The provisions of this act are severable. If any*
34 *provision of this act or its application is held invalid, that invalidity*
35 *shall not affect other provisions or applications that can be given*
36 *effect without the invalid provision or application.*