

AMENDED IN SENATE APRIL 26, 2016
AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1150

Introduced by ~~Senator~~ *Senators Leno and Galgiani*

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,~~ *servicer*, upon notification that a borrower has died, from recording a notice of default until the mortgage ~~servicer or lender~~ does certain things, including requesting reasonable documentation of the death of the borrower from a claimant, ~~which~~ *who* is someone claiming to be a successor in interest, ~~that~~ *who* 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~~, *servicer*, 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~~ *prevention* 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~~ *the* action. The bill would define terms for these purposes and make various findings and declarations.

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. 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
8 foreclosure proceedings while borrowers and their families were
9 in the middle of applying for a loan modification.
10 (b) The California Legislature responded with a
11 first-in-the-nation Homeowner Bill of Rights (HBOR), which
12 requires mortgage servicers to provide borrowers a fair and
13 transparent process, a single point of contact, and the opportunity
14 to finish applying for a loan modification before foreclosure
15 proceedings can start. HBOR stabilized families, neighborhoods,
16 and local communities by slowing down indiscriminate
17 foreclosures.

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

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

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

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

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

27 2920.7. (a) Upon notification by someone claiming to be a
28 successor in interest that a borrower has died, and where that
29 claimant is not a party to the loan or promissory note, a mortgage
30 servicer ~~or lender~~ shall not record a notice of default pursuant to
31 Section 2924 until the mortgage servicer ~~or lender~~ does both of
32 the following:

33 (1) Requests reasonable documentation of the death of the
34 borrower from the claimant, including, but not limited to, a death
35 certificate or other written evidence of the death of the borrower.
36 A reasonable period of time shall be provided for the claimant to
37 present this documentation, but no less than 30 days from the date
38 of a written request by the mortgage servicer.

39 (2) Requests reasonable documentation ~~of the status of a~~
40 ~~claimant as such, and that claimant’s interest from the claimant~~

1 *regarding the status of that claimant as a successor in interest in*
2 *the real property. A reasonable period of time shall be provided*
3 *for the claimant to present this documentation, but no less than 90*
4 *days from the date of a written request by the mortgage servicer.*

5 (b) (1) Upon receipt by the mortgage servicer of the reasonable
6 documentation of the status of a claimant as successor in interest
7 and that claimant's relation to the real property, that claimant shall
8 be deemed a "successor in interest."

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

10 (3) Being a successor in interest under this section does not
11 impose an affirmative duty on a mortgage servicer ~~or lender~~ or
12 alter any obligation the mortgage servicer ~~or lender~~ has to provide
13 a loan modification to the successor in interest. If a successor in
14 interest assumes the loan, he or she may be required to otherwise
15 qualify for available foreclosure prevention alternatives offered
16 by the mortgage ~~servicer or lender~~ *servicer*.

17 (c) Within 10 days of a claimant being deemed a successor in
18 interest pursuant to subdivision (b), a mortgage servicer ~~or lender~~
19 shall provide the successor in interest with information in writing
20 about the loan. ~~Such~~ *This* information shall include, at a minimum,
21 loan balance, interest rate and interest reset dates and amounts,
22 balloon payments if any, prepayment penalties if any, default or
23 delinquency status, the monthly payment amount, and payoff
24 amounts.

25 (d) A mortgage servicer ~~or lender~~ shall allow a successor in
26 interest to either:

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

29 (2) Where a successor in interest of an assumable loan also
30 seeks a foreclosure prevention alternative, simultaneously apply
31 to assume the loan and for a foreclosure prevention alternative that
32 is offered by the loan lender or applicable loss mitigation rules. If
33 the successor in interest qualifies for the foreclosure prevention
34 alternative, the servicer ~~or lender~~ shall allow the successor in
35 interest to assume the loan.

36 (e) (1) A successor in interest who is eligible to assume a
37 deceased borrower's outstanding mortgage loan and wishes to
38 apply for a foreclosure ~~avoidance~~ *prevention* alternative in
39 connection with that loan shall have all the same rights and
40 remedies as a borrower under subdivision (a) of Section 2923.4

1 and under Sections ~~2923.5, 2923.55, 2923.6, 2923.7, 2924, 2924.6,~~
2 2924.9, 2924.10, 2924.11, 2924.12, 2924.15, 2924.17, 2924.18,
3 ~~2924.19, and 2924.20.~~ and 2924.19. For the purposes of Section
4 2924.15, “owner-occupied” means that the property was the
5 principal residence of the deceased borrower and is security for a
6 loan made for personal, family, or household purposes.

7 (2) If a trustee’s deed upon sale has not been recorded, a
8 successor in interest may bring an action for injunctive relief to
9 enjoin a material violation of subdivision (a), (b), (c), or (d) of
10 Section 2920.7. Any injunction shall remain in place and any
11 trustee’s sale shall be enjoined until the court determines that the
12 mortgage servicer ~~or lender~~ has corrected and remedied the
13 violation or violations giving rise to the action for injunctive relief.
14 An enjoined entity may move to dissolve an injunction based on
15 a showing that the material violation has been corrected and
16 remedied.

17 (3) After a trustee’s deed upon sale has been recorded, a
18 mortgage servicer ~~or lender~~ shall be liable to a successor in interest
19 for actual economic damages pursuant to Section 3281 resulting
20 from a material violation of subdivision (a), (b), (c), or (d) of
21 Section 2920.7 by that mortgage servicer ~~or lender~~ *where if* the
22 violation was not corrected and remedied prior to the recordation
23 of the trustee’s deed upon sale. If the court finds that the material
24 violation was intentional or reckless, or resulted from willful
25 misconduct by a mortgage servicer ~~or lender~~ the court may award
26 the successor in interest the greater of treble actual damages or
27 statutory damages of fifty thousand dollars (\$50,000).

28 (4) A court may award a prevailing successor in interest
29 reasonable attorney’s fees and costs in an action brought pursuant
30 to this section. A successor in interest shall be deemed to have
31 prevailed for purposes of this subdivision if the successor in interest
32 obtained injunctive relief or damages pursuant to this section.

33 (5) A mortgage servicer ~~or lender~~ shall not be liable for any
34 violation that it has corrected and remedied prior to the recordation
35 of the trustee’s deed upon sale or that has been corrected and
36 remedied by third parties working on its behalf prior to the
37 recordation of the trustee’s deed upon sale.

38 (f) Consistent with their general regulatory authority, and
39 notwithstanding subdivisions (b) and (c) of Section 2924.18, the
40 Department of Business Oversight and the Bureau of Real Estate

1 may adopt regulations applicable to any entity or person under
2 their respective jurisdictions that are necessary to carry out the
3 purposes of this section.

4 (g) The rights and remedies provided by this section are in
5 addition to and independent of any other rights, remedies, or
6 procedures under any other law. This section shall not be construed
7 to alter, limit, or negate any other rights, remedies, or procedures
8 provided by law.

9 (f)

10 (h) For purposes of this section, all of the following definitions
11 shall apply:

12 ~~(1) “Lender” means a finance lender or broker licensed under~~
13 ~~the California Finance Lenders Law (Division 9 (commencing~~
14 ~~with Section 22000) of the Financial Code), a residential mortgage~~
15 ~~lender licensed under the California Residential Mortgage Lending~~
16 ~~Act (Division 20 (commencing with Section 50000) of the~~
17 ~~Financial Code), a commercial or industrial bank organized under~~
18 ~~the Banking Law (Division 1 (commencing with Section 99) of~~
19 ~~the Financial Code), a savings association organized under the~~
20 ~~Savings Association Law (Division 2 (commencing with Section~~
21 ~~5000) of the Financial Code), and a credit union organized under~~
22 ~~the California Credit Union Law (Division 5 (commencing with~~
23 ~~Section 14000) of the Financial Code).~~

24 ~~(2)~~

25 ~~(1) “Notification of the death of the mortgagor or trustor” means~~
26 ~~provision to the mortgage servicer of a death certificate or, if a~~
27 ~~death certificate is not available, of other written evidence of the~~
28 ~~death of the mortgagor or trustor deemed sufficient by the mortgage~~
29 ~~servicer.~~

30 ~~(2) “Mortgage servicer or lender” includes a mortgagee, trustee,~~
31 ~~beneficiary, or authorized agent. servicer” shall have the same~~
32 ~~meaning as provided in Section 2920.5.~~

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

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

1 (B) *In the case of devisee or an heir, a copy of the relevant will*
2 *or trust document.*

3 (C) *In the case of a beneficiary of a revocable transfer on death*
4 *deed, a copy of that deed.*

5 ~~(B)~~

6 (D) *In the case of a surviving joint tenant, an affidavit of death*
7 *of the joint tenant or a grant deed showing joint tenancy.*

8 ~~(C)~~

9 (E) *In the case of a surviving spouse where the real property*
10 *was held as community property with right of survivorship, an*
11 *affidavit of death of the spouse or a deed showing community*
12 *property with right of survivorship.*

13 ~~(D)~~

14 (F) *In the case of a trustee of a trust, a certification of trust*
15 *pursuant to Section 18100.5 of the Probate Code.*

16 ~~(E)~~

17 (G) *In the case of a beneficiary of a trust, relevant trust*
18 *documents related to the beneficiary's interest.*

19 (4) "Successor in interest" means a natural person who provides
20 the mortgage servicer ~~or lender~~ with notification of the death of
21 the mortgagor or trustor and reasonable documentation showing
22 that the person is any of the following:

23 (A) The personal representative, as defined in Section 58 of the
24 Probate Code, of the mortgagor's or trustor's estate.

25 (B) The devisee, as defined in Section 34 of the Probate Code,
26 or the heir, as defined in Section 44 of the Probate Code, of the
27 real property that secures the mortgage or deed of trust.

28 ~~(C) The beneficiary of a Revocable Transfer on Death Deed,~~
29 ~~as defined in Section 5608 of the Probate Code. beneficiary, as~~
30 ~~defined in Section 5608 of the Probate Code, on a revocable~~
31 ~~transfer on death deed.~~

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

33 (E) The surviving spouse of the mortgagor or trustor if the real
34 property that secures the mortgage or deed of trust was held as
35 community property with right of survivorship pursuant to Section
36 682.1.

37 (F) The trustee of the trust that owns the real property that
38 secures the mortgage or deed of trust or the beneficiary of that
39 trust.

1 *(i) This section shall apply to first lien mortgages or deeds of*
2 *trust that are secured by owner-occupied residential real property*
3 *containing no more than four dwelling units. “Owner-occupied”*
4 *means that the property was the principal residence of the deceased*
5 *borrower.*

6 SEC. 3. The provisions of this act are severable. If any
7 provision of this act or its application is held invalid, that invalidity
8 shall not affect other provisions or applications that can be given
9 effect without the invalid provision or application.