

AMENDED IN SENATE MAY 16, 2016
AMENDED IN SENATE MAY 10, 2016
AMENDED IN SENATE APRIL 26, 2016
AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1150

**Introduced by Senators Leno and Galgiani
(Coauthor: Senator Wieckowski)**

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, upon notification that a borrower has died, from recording a notice of default until the mortgage servicer does certain things, including requesting reasonable documentation of the death of the borrower from a claimant, who is

someone claiming to be a successor in interest, 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 of the reasonable documentation regarding the status of the claimant. The bill would require a mortgage 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 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 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 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

1 proceedings can start. HBOR stabilized families, neighborhoods,
2 and local communities by slowing down indiscriminate
3 foreclosures.

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

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

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

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

29 (g) *It is the intent of the Legislature that this act work in*
30 *conjunction with federal Consumer Financial Protection Bureau*
31 *servicing guidelines.*

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

33 2920.7. (a) Upon notification by someone claiming to be a
34 successor in interest that a borrower has died, and where that
35 claimant is not a party to the loan or promissory note, a mortgage
36 servicer shall not record a notice of default pursuant to Section
37 2924 until the mortgage servicer does both of the following:

38 (1) Requests reasonable documentation of the death of the
39 borrower from the claimant, including, but not limited to, a death
40 certificate or other written evidence of the death of the borrower.

1 A reasonable period of time shall be provided for the claimant to
2 present this documentation, but no less than 30 days from the date
3 of a written request by the mortgage servicer.

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

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

13 (2) There may be more than one successor in interest. A
14 mortgage servicer shall apply the provisions of this section to
15 multiple successors in interest in accordance with the terms of the
16 loan and federal and state laws and regulations.

17 (3) Being a successor in interest under this section does not
18 impose an affirmative duty on a mortgage servicer or alter any
19 obligation the mortgage servicer has to provide a loan modification
20 to the successor in interest. If a successor in interest assumes the
21 loan, he or she may be required to otherwise qualify for available
22 foreclosure prevention alternatives offered by the mortgage
23 servicer.

24 (c) Within 10 days of a claimant being deemed a successor in
25 interest pursuant to subdivision (b), a mortgage servicer shall
26 provide the successor in interest with information in writing about
27 the loan. This information shall include, at a minimum, loan
28 balance, interest rate and interest reset dates and amounts, balloon
29 payments if any, prepayment penalties if any, default or
30 delinquency status, the monthly payment amount, and payoff
31 amounts.

32 (d) A mortgage servicer shall allow a successor in interest to
33 either:

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

36 (2) Where a successor in interest of an assumable loan also
37 seeks a foreclosure prevention alternative, simultaneously apply
38 to assume the loan and for a foreclosure prevention alternative that
39 is offered by the loan lender or applicable loss mitigation rules. If
40 the successor in interest qualifies for the foreclosure prevention

1 alternative, the servicer shall allow the successor in interest to
2 assume the loan.

3 (e) (1) A successor in interest who is eligible to assume a
4 deceased borrower's outstanding mortgage loan and wishes to
5 apply for a foreclosure prevention alternative in connection with
6 that loan shall have all the same rights and remedies as a borrower
7 under subdivision (a) of Section 2923.4 and under Sections 2923.6,
8 2923.7, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.15,
9 2924.17, 2924.18, and 2924.19. For the purposes of Section
10 2924.15, "owner-occupied" means that the property was the
11 principal residence of the deceased borrower and is security for a
12 loan made for personal, family, or household purposes.

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

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

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

38 (5) A mortgage servicer shall not be liable for any violation that
39 it has corrected and remedied prior to the recordation of the
40 trustee's deed upon sale or that has been corrected and remedied

1 by third parties working on its behalf prior to the recordation of
2 the trustee’s deed upon sale.

3 (f) Consistent with their general regulatory authority, and
4 notwithstanding subdivisions (b) and (c) of Section 2924.18, the
5 Department of Business Oversight and the Bureau of Real Estate
6 may adopt regulations applicable to any entity or person under
7 their respective jurisdictions that are necessary to carry out the
8 purposes of this section.

9 (g) The rights and remedies provided by this section are in
10 addition to and independent of any other rights, remedies, or
11 procedures under any other law. This section shall not be construed
12 to alter, limit, or negate any other rights, remedies, or procedures
13 provided by law.

14 (h) *Except as otherwise provided, this act does not affect the*
15 *obligations arising from a mortgage or deed of trust.*

16 ~~(h)~~

17 (i) For purposes of this section, all of the following definitions
18 shall apply:

19 (1) “Notification of the death of the mortgagor or trustor” means
20 provision to the mortgage servicer of a death certificate or, if a
21 death certificate is not available, of other written evidence of the
22 death of the mortgagor or trustor deemed sufficient by the mortgage
23 servicer.

24 (2) “Mortgage servicer” shall have the same meaning as
25 provided in Section 2920.5.

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

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

34 (B) In the case of devisee or an heir, a copy of the relevant will
35 or trust document.

36 (C) In the case of a beneficiary of a revocable transfer on death
37 deed, a copy of that deed.

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

1 (E) In the case of a surviving spouse where the real property
2 was held as community property with right of survivorship, an
3 affidavit of death of the spouse or a deed showing community
4 property with right of survivorship.

5 (F) In the case of a trustee of a trust, a certification of trust
6 pursuant to Section 18100.5 of the Probate Code.

7 (G) In the case of a beneficiary of a trust, relevant trust
8 documents related to the beneficiary’s interest.

9 (4) “Successor in interest” means a natural person who provides
10 the mortgage servicer with notification of the death of the
11 mortgagor or trustor and reasonable documentation showing that
12 the person is any of the following:

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

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

18 (C) The beneficiary, as defined in Section 5608 of the Probate
19 Code, on a revocable transfer on death deed.

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

21 (E) The surviving spouse of the mortgagor or trustor if the real
22 property that secures the mortgage or deed of trust was held as
23 community property with right of survivorship pursuant to Section
24 682.1.

25 (F) The trustee of the trust that owns the real property that
26 secures the mortgage or deed of trust or the beneficiary of that
27 trust.

28 (i)

29 (j) This section shall apply to first lien mortgages or deeds of
30 trust that are secured by owner-occupied residential real property
31 containing no more than four dwelling units. “Owner-occupied”
32 means that the property was the principal residence of the deceased
33 borrower.

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

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