

AMENDED IN SENATE MAY 26, 2016
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~~ *interest, as specified*, 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~~ *information*, and then
- 8 they started foreclosure proceedings while borrowers and their
- 9 families were 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

1 transparent process, a single point of contact, and the opportunity
2 to finish applying for a loan modification before foreclosure
3 proceedings can start. HBOR stabilized families, neighborhoods,
4 and local communities by slowing down indiscriminate
5 foreclosures.

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

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

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

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

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

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

35 2920.7. (a) Upon notification by someone claiming to be a
36 successor in interest that a borrower has died, and where that
37 claimant is not a party to the loan or promissory note, a mortgage
38 servicer shall not record a notice of default pursuant to Section
39 2924 until the mortgage servicer does both of the following:

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

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

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

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

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

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

35 (d) A mortgage servicer shall allow a successor in interest to
36 either:

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

39 (2) Where a successor in interest of an assumable loan also
40 seeks a foreclosure prevention alternative, simultaneously apply

1 to assume the loan and for a foreclosure prevention alternative that
2 is offered by the loan lender or applicable loss mitigation rules. If
3 the successor in interest qualifies for the foreclosure prevention
4 alternative, the servicer shall allow the successor in interest to
5 assume the loan.

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

17 (B) *For the purposes of subparagraph (A), a successor in*
18 *interest shall meet all of the following criteria:*

19 (i) *Be eligible to assume a deceased borrower's outstanding*
20 *mortgage loan.*

21 (ii) *Wish to apply for a foreclosure prevention alternative in*
22 *connection with the deceased borrower's loan.*

23 (iii) *Be one of the following:*

24 (I) *The spouse, child, or grandchild of the deceased borrower.*

25 (II) *A person who occupies the property as his or her principal*
26 *residence at the time of the deceased borrower's death.*

27 (III) *A person who will occupy the property as his or her*
28 *principal residence within 60 days of loan assumption.*

29 (2) If a trustee's deed upon sale has not been recorded, a
30 successor in interest may bring an action for injunctive relief to
31 enjoin a material violation of subdivision (a), (b), (c), or (d). Any
32 injunction shall remain in place and any trustee's sale shall be
33 enjoined until the court determines that the mortgage servicer has
34 corrected and remedied the violation or violations giving rise to
35 the action for injunctive relief. An enjoined entity may move to
36 dissolve an injunction based on a showing that the material
37 violation has been corrected and remedied.

38 (3) After a trustee's deed upon sale has been recorded, a
39 mortgage servicer shall be liable to a successor in interest for actual
40 economic damages pursuant to Section 3281 resulting from a

1 material violation of subdivision (a), (b), (c), or (d) ~~of Section~~
2 ~~2920.7~~ by that mortgage servicer if the violation was not corrected
3 and remedied prior to the recordation of the trustee's deed upon
4 sale. If the court finds that the material violation was intentional
5 or reckless, or resulted from willful misconduct by a mortgage
6 ~~servicer~~ *servicer*, the court may award the successor in interest the
7 greater of treble actual damages or statutory damages of fifty
8 thousand dollars (\$50,000).

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

14 (5) A mortgage servicer shall not be liable for any violation that
15 it has corrected and remedied prior to the recordation of the
16 trustee's deed upon sale or that has been corrected and remedied
17 by third parties working on its behalf prior to the recordation of
18 the trustee's deed upon sale.

19 (f) Consistent with their general regulatory authority, and
20 notwithstanding subdivisions (b) and (c) of Section 2924.18, the
21 Department of Business Oversight and the Bureau of Real Estate
22 may adopt regulations applicable to any entity or person under
23 their respective jurisdictions that are necessary to carry out the
24 purposes of this section.

25 (g) The rights and remedies provided by this section are in
26 addition to and independent of any other rights, remedies, or
27 procedures under any other law. This section shall not be construed
28 to alter, limit, or negate any other rights, remedies, or procedures
29 provided by law.

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

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

34 (1) "Notification of the death of the mortgagor or trustor" means
35 provision to the mortgage servicer of a death certificate or, if a
36 death certificate is not available, of other written evidence of the
37 death of the mortgagor or trustor deemed sufficient by the mortgage
38 servicer.

39 (2) "Mortgage servicer" shall have the same meaning as
40 provided in Section 2920.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (E) The surviving spouse of the mortgagor or trustor if the real
36 property that secures the mortgage or deed of trust was held as
37 community property with right of survivorship pursuant to Section
38 682.1.

1 (F) The trustee of the trust that owns the real property that
2 secures the mortgage or deed of trust or the beneficiary of that
3 trust.

4 (j) This section shall apply to first lien mortgages or deeds of
5 trust that are secured by owner-occupied residential real property
6 containing no more than four dwelling units. "Owner-occupied"
7 means that the property was the principal residence of the deceased
8 borrower.

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

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