

AMENDED IN ASSEMBLY JUNE 13, 2016

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**

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

February 18, 2016

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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, loan~~ or to apply for foreclosure prevention alternatives on an assumable ~~loan, as specified.~~ *loan to the extent permitted under state and federal law and the terms of the loan.* The bill would provide that a successor in 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. *The bill would exempt specified depository institutions and persons from these provisions.*

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

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

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

1 2920.7. (a) Upon notification by someone claiming to be a  
2 successor in interest that a borrower has died, and where that  
3 claimant is not a party to the loan or promissory note, a mortgage  
4 servicer shall not record a notice of default pursuant to Section  
5 2924 until the mortgage servicer does both of the following:

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

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

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

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

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

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

1 (d) A mortgage servicer shall allow a successor in interest to  
2 either:

3 (1) Assume the deceased borrower's ~~loan, unless such~~  
4 ~~assumption is prohibited by the terms of the loan.~~ *loan to the extent*  
5 *permitted under state and federal law and the terms of the loan.*

6 (2) Where a successor in interest of an assumable loan also  
7 seeks a foreclosure prevention alternative, simultaneously apply  
8 to assume the loan and for a foreclosure prevention alternative that  
9 is offered by the loan lender or applicable loss mitigation rules. If  
10 the successor in interest qualifies for the foreclosure prevention  
11 alternative, the servicer shall allow the successor in interest to  
12 assume the ~~loan.~~ *loan to the extent permitted under state and*  
13 *federal law and the terms of the loan.*

14 (e) (1) (A) A successor in interest who meets the criteria in  
15 subparagraph (B) shall have all the same rights and remedies as a  
16 borrower under subdivision (a) of Section 2923.4 and under  
17 Sections 2923.6, 2923.7, 2924, 2924.9, 2924.10, 2924.11, 2924.12,  
18 2924.15, 2924.17, 2924.18, and 2924.19. For the purposes of  
19 Section 2924.15, "owner-occupied" means that the property was  
20 the principal residence of the deceased borrower and is security  
21 for a loan made for personal, family, or household purposes.

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

24 (i) Be eligible to assume a deceased borrower's outstanding  
25 mortgage loan.

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

28 (iii) Be ~~one~~ *either* of the following:

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

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

32 ~~(III) A person who will occupy the property as his or her~~  
33 ~~principal residence within 60 days of loan assumption.~~

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

1 dissolve an injunction based on a showing that the material  
2 violation has been corrected and remedied.

3 (3) After a trustee's deed upon sale has been recorded, a  
4 mortgage servicer shall be liable to a successor in interest for actual  
5 economic damages pursuant to Section 3281 resulting from a  
6 material violation of subdivision (a), (b), (c), or (d) by that  
7 mortgage servicer if the violation was not corrected and remedied  
8 prior to the recordation of the trustee's deed upon sale. If the court  
9 finds that the material violation was intentional or reckless, or  
10 resulted from willful misconduct by a mortgage servicer, the court  
11 may award the successor in interest the greater of treble actual  
12 damages or statutory damages of fifty thousand dollars (\$50,000).

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

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

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

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

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

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

38 (1) "Notification of the death of the mortgagor or trustor" means  
39 provision to the mortgage servicer of a death certificate or, if a  
40 death certificate is not available, of other written evidence of the

1 death of the mortgagor or trustor deemed sufficient by the mortgage  
2 servicer.

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

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

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

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

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

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

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

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

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

27 (4) “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 any of the following:

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

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

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

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

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

11 (k) *This section shall not apply to a depository institution*  
12 *chartered under state or federal law, a person licensed pursuant*  
13 *to Division 9 (commencing with Section 22000) or Division 20*  
14 *(commencing with Section 50000) of the Financial Code, or a*  
15 *person licensed pursuant to Part 1 (commencing with Section*  
16 *10000) of Division 4 of the Business and Professions Code, that,*  
17 *during its immediately preceding annual reporting period, as*  
18 *established with its primary regulator, foreclosed on 175 or fewer*  
19 *residential real properties, containing no more than four dwelling*  
20 *units, that are located in California.*

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