

AMENDED IN ASSEMBLY AUGUST 15, 2016

AMENDED IN ASSEMBLY JUNE 30, 2016

AMENDED IN ASSEMBLY JUNE 23, 2016

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

**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: 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~~: *claimant as a successor in interest and the claimant's ownership interest in the real property.* ~~The~~

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 assume the deceased borrower's loan or to apply for foreclosure prevention alternatives on an assumable loan, as specified. The bill would authorize a mortgage servicer, when there are multiple successors in interest who do not wish to proceed as coborrowers or coapplicants, to require any nonapplicant successor in interest to consent in writing to the application for a loan assumption. 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 deem a mortgage servicer, mortgagee, or beneficiary of the deed of trust, or an agent thereof, to be in compliance with the above-described provisions if they comply with specified federal laws. The bill would exempt ~~specified~~ *certain* depository institutions and persons from these ~~provisions~~: *provisions, as specified.*

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.

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

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

30 (e) Home ownership is the primary avenue for most Americans
31 to build generational wealth. Indiscriminate foreclosures on
32 surviving heirs destroy a family’s ability to build for its financial
33 future. Foreclosures also exacerbate the racial wealth gap—and
34 overall wealth inequality—in society, and force seniors who want

1 to “age in place” into the overheated rental market instead, with
2 devastating health impacts.

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

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

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

13 2920.7. (a) Upon notification by someone claiming to be a
14 successor in interest that a borrower has died, and where that
15 claimant is not a party to the loan or promissory note, a mortgage
16 servicer shall not record a notice of default pursuant to Section
17 2924 until the mortgage servicer does both of the following:

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

24 (2) Requests reasonable documentation from the claimant
25 ~~regarding the status~~ *demonstrating the ownership interest* of that
26 claimant ~~as a successor in interest~~ in the real property. A reasonable
27 period of time shall be provided for the claimant to present this
28 documentation, but no less than 90 days from the date of a written
29 request by the mortgage servicer.

30 (b) (1) Upon receipt by the mortgage servicer of the reasonable
31 documentation of the status of a claimant as successor in interest
32 and that claimant’s ~~relation to~~ *ownership interest in* the real
33 property, that claimant shall be deemed a “successor in interest.”

34 (2) There may be more than one successor in interest. A
35 mortgage servicer shall apply the provisions of this section to
36 multiple successors in interest in accordance with the terms of the
37 loan and federal and state laws and regulations. *When there are*
38 *multiple successors in interest who do not wish to proceed as*
39 *coborrowers or coapplicants, a mortgage servicer may require*

1 *any nonapplicant successor in interest to consent in writing to the*
2 *application for loan assumption.*

3 (3) Being a successor in interest under this section does not
4 impose an affirmative duty on a mortgage servicer or alter any
5 obligation the mortgage servicer has to provide a loan modification
6 to the successor in interest. If a successor in interest assumes the
7 loan, he or she may be required to otherwise qualify for available
8 foreclosure prevention alternatives offered by the mortgage
9 servicer.

10 (c) Within 10 days of a claimant being deemed a successor in
11 interest pursuant to subdivision (b), a mortgage servicer shall
12 provide the successor in interest with information in writing about
13 the loan. This information shall include, at a minimum, loan
14 balance, interest rate and interest reset dates and amounts, balloon
15 payments if any, prepayment penalties if any, default or
16 delinquency status, the monthly payment amount, and payoff
17 amounts.

18 (d) A mortgage servicer shall allow a successor in interest ~~to~~
19 *to either:*

20 (1) Apply to assume the deceased borrower's loan. The mortgage
21 servicer may evaluate the creditworthiness of the successor in
22 interest, subject to applicable investor requirements and guidelines.

23 (2) If a successor in interest of an assumable loan also seeks a
24 foreclosure prevention alternative, simultaneously apply to assume
25 the loan and for a foreclosure prevention alternative that may be
26 offered by, or available through, the mortgage loan ~~servicer.~~

27 ~~(3) If servicer. If~~ the successor in interest qualifies for the
28 foreclosure prevention alternative, assume the loan. The mortgage
29 servicer may evaluate the creditworthiness of the successor in
30 interest subject to applicable investor requirements and guidelines.

31 (e) (1) A successor in interest shall have all the same rights and
32 remedies as a borrower under subdivision (a) of Section 2923.4
33 and under Sections 2923.6, 2923.7, 2924, 2924.9, 2924.10,
34 2924.11, 2924.12, 2924.15, 2924.17, 2924.18, and 2924.19. For
35 the purposes of Section 2924.15, "owner-occupied" means that
36 the property was the principal residence of the deceased borrower
37 and is security for a loan made for personal, family, or household
38 purposes.

39 (2) If a trustee's deed upon sale has not been recorded, a
40 successor in interest may bring an action for injunctive relief to

1 enjoin a material violation of subdivision (a), (b), (c), or (d). Any
2 injunction shall remain in place and any trustee's sale shall be
3 enjoined until the court determines that the mortgage servicer has
4 corrected and remedied the violation or violations giving rise to
5 the action for injunctive relief. An enjoined entity may move to
6 dissolve an injunction based on a showing that the material
7 violation has been corrected and remedied.

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

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

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

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

34 (g) The rights and remedies provided by this section are in
35 addition to and independent of any other rights, remedies, or
36 procedures under any other law. This section shall not be construed
37 to alter, limit, or negate any other rights, remedies, or procedures
38 provided by law.

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

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

3 (1) “Notification of the death of the mortgagor or trustor” means
4 provision to the mortgage servicer of a death certificate or, if a
5 death certificate is not available, of other written evidence of the
6 death of the mortgagor or trustor deemed sufficient by the mortgage
7 servicer.

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

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

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

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

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

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

24 (E) In the case of a surviving spouse where the real property
25 was held as community property with right of survivorship, an
26 affidavit of death of the spouse or a deed showing community
27 property with right of survivorship.

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

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

32 (4) “Successor in interest” means a natural person who provides
33 the mortgage servicer with notification of the death of the
34 mortgagor or trustor and reasonable documentation showing that
35 the person is the spouse, domestic partner, joint tenant as evidenced
36 by grant deed, parent, grandparent, adult child, adult grandchild,
37 or adult sibling of the deceased borrower, who occupied the
38 property as his or her principal residence within the last six
39 continuous months prior to the deceased borrower’s death and who
40 currently resides in the property.

1 (j) 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 (k) (1) Any mortgage servicer, mortgagee, or beneficiary of
7 the deed of trust, or an authorized agent thereof, who, with respect
8 to the successor in interest or person claiming to be a successor in
9 interest, complies with the relevant provisions regarding successors
10 in interest of Part 1024 of Title 12 of the Code of Federal
11 Regulations (12 C.F.R. Part 1024), known as Regulation X, and
12 Part 1026 of Title 12 of the Code of Federal Regulations (12 C.F.R.
13 Part 1026), known as Regulation Z, including any revisions to
14 those regulations, shall be deemed to be in compliance with this
15 section.

16 (2) The provisions of paragraph (1) shall only become operative
17 on the effective date of any revisions to the relevant provisions
18 regarding successors in interest of Part 1024 of Title 12 of the
19 Code of Federal Regulations (12 C.F.R. Part 1024), known as
20 Regulation X, and Part 1026 of Title 12 of the Code of Federal
21 Regulations (12 C.F.R. Part 1026), known as Regulation Z, issued
22 by the *federal* Consumer Financial Protection Bureau that revise
23 the Final Servicing Rules in 78 Federal Register 10696, of February
24 14th, 2013.

25 (l) This section shall not apply to a successor in interest who is
26 engaged in a legal dispute over the property that is security for the
27 borrower’s outstanding mortgage loan and has filed a claim raising
28 this dispute in a legal proceeding.

29 (m) This section shall not apply to a depository institution
30 chartered under state or federal law, a person licensed pursuant to
31 Division 9 (commencing with Section 22000) or Division 20
32 (commencing with Section 50000) of the Financial Code, or a
33 person licensed pursuant to Part 1 (commencing with Section
34 10000) of Division 4 of the Business and Professions Code, that,
35 during its immediately preceding annual reporting period, as
36 established with its primary regulator, foreclosed on 175 or fewer
37 residential real properties, containing no more than four dwelling
38 units, that are located in California.

39 SEC. 3. The provisions of this act are severable. If any
40 provision of this act or its application is held invalid, that invalidity

- 1 shall not affect other provisions or applications that can be given
- 2 effect without the invalid provision or application.

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