

AMENDED IN ASSEMBLY AUGUST 19, 2016  
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 *until January 1, 2020*, 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 as a successor in interest and the claimant's ownership interest in the real property.

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 certain depository institutions and persons from these 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 demonstrating the ownership interest of that claimant in the real  
26 property. A reasonable period of time shall be provided for the  
27 claimant to present this documentation, but no less than 90 days  
28 from the date of a written request by the mortgage servicer.

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

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

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

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

16 (d) A mortgage servicer shall allow a successor in interest to  
17 either:

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

21 (2) If a successor in interest of an assumable loan also seeks a  
22 foreclosure prevention alternative, simultaneously apply to assume  
23 the loan and for a foreclosure prevention alternative that may be  
24 offered by, or available through, the mortgage loan servicer. If the  
25 successor in interest qualifies for the foreclosure prevention  
26 alternative, assume the loan. The mortgage servicer may evaluate  
27 the creditworthiness of the successor in interest subject to  
28 applicable investor requirements and guidelines.

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

37 (2) If a trustee's deed upon sale has not been recorded, a  
38 successor in interest may bring an action for injunctive relief to  
39 enjoin a material violation of subdivision (a), (b), (c), or (d). Any  
40 injunction shall remain in place and any trustee's sale shall be

1 enjoined until the court determines that the mortgage servicer has  
2 corrected and remedied the violation or violations giving rise to  
3 the action for injunctive relief. An enjoined entity may move to  
4 dissolve an injunction based on a showing that the material  
5 violation has been corrected and remedied.

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

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

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

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

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

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

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

- 1 (1) “Notification of the death of the mortgagor or trustor” means  
2 provision to the mortgage servicer of a death certificate or, if a  
3 death certificate is not available, of other written evidence of the  
4 death of the mortgagor or trustor deemed sufficient by the mortgage  
5 servicer.
- 6 (2) “Mortgage servicer” shall have the same meaning as  
7 provided in Section 2920.5.
- 8 (3) “Reasonable documentation” means copies of the following  
9 documents, as may be applicable, or, if the relevant documentation  
10 listed is not available, other written evidence of the person’s status  
11 as successor in interest to the real property that secures the  
12 mortgage or deed of trust deemed sufficient by the mortgage  
13 servicer:
- 14 (A) In the case of a personal representative, letters as defined  
15 in Section 52 of the Probate Code.
- 16 (B) In the case of devisee or an heir, a copy of the relevant will  
17 or trust document.
- 18 (C) In the case of a beneficiary of a revocable transfer on death  
19 deed, a copy of that deed.
- 20 (D) In the case of a surviving joint tenant, an affidavit of death  
21 of the joint tenant or a grant deed showing joint tenancy.
- 22 (E) In the case of a surviving spouse where the real property  
23 was held as community property with right of survivorship, an  
24 affidavit of death of the spouse or a deed showing community  
25 property with right of survivorship.
- 26 (F) In the case of a trustee of a trust, a certification of trust  
27 pursuant to Section 18100.5 of the Probate Code.
- 28 (G) In the case of a beneficiary of a trust, relevant trust  
29 documents related to the beneficiary’s interest.
- 30 (4) “Successor in interest” means a natural person who provides  
31 the mortgage servicer with notification of the death of the  
32 mortgagor or trustor and reasonable documentation showing that  
33 the person is the spouse, domestic partner, joint tenant as evidenced  
34 by grant deed, parent, grandparent, adult child, adult grandchild,  
35 or adult sibling of the deceased borrower, who occupied the  
36 property as his or her principal residence within the last six  
37 continuous months prior to the deceased borrower’s death and who  
38 currently resides in the property.
- 39 (j) This section shall apply to first lien mortgages or deeds of  
40 trust that are secured by owner-occupied residential real property

1 containing no more than four dwelling units. “Owner-occupied”  
2 means that the property was the principal residence of the deceased  
3 borrower.

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

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

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

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

37 (n) *This section shall remain in effect only until January 1, 2020,*  
38 *and as of that date is repealed, unless a later enacted statute, that*  
39 *is enacted before January 1, 2020, deletes or extends that date.*

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

O