

Date of Hearing: June 20, 2016

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

SB 1150 (Leno) – As Amended June 13, 2016

**SENATE VOTE:** 21-14

**SUBJECT:** Mortgages and deeds of trust: mortgage servicers and lenders: successors in interest

**SUMMARY:** Requires mortgage servicers and lenders to provide successors in interest with key information about outstanding mortgages previously held by a deceased borrower; requires servicers and lenders to allow successors in interest to assume those mortgages, as specified, and to apply and be considered for foreclosure prevention alternatives in connection with those mortgages, as specified; and provides judicial enforcement mechanisms for use by successors in interest to compel lenders and servicers to comply with the bill's provisions. Specifically, **this bill:**

- 1) Provides that upon notification by someone claiming to be a successor in interest that a borrower has died, and where the person claiming to be a successor is not a party to the loan or promissory note, the mortgage servicer shall not record a notice of default (NOD) until the servicer does both of the following:
  - a) Request reasonable documentation of the death of the borrower from the claimant, including but not limited to, a death certificate or other written evidence of the death of the borrower. The servicer is required to provide the claimant a minimum of 30 days to respond to the request for information; and,
  - b) Request reasonable documentation from the claimant regarding the status of the claimant as a successor in interest. The servicer is required to provide the claimant at least 90 days from the date of the written request.
- 2) Specifies that upon receipt by the mortgage servicer of the reasonable documentation of the claimant as successor in interest the claimant shall be deemed a "successor in interest."
- 3) Requires a servicer to apply the provisions specified to multiple successors in interest.
- 4) States that an affirmative duty is not on a servicer to provide a loan modification to a successor in interest.
- 5) Provides that a successor in interest that assumes the loan may be required to otherwise qualify for available foreclosure prevention alternatives offered by the mortgage servicer.
- 6) Requires a mortgage servicer, with 10 days of a claimant being deemed a successor in interest to provide the successor in interest with information in writing about the loan, including loan balance, interest rate, interest reset dates and amounts, balloon payments, if any, prepayment penalties if any, default or delinquency status, the monthly payment amount, and payoff amounts.

- 7) Specifies that a mortgage servicer shall allow a successor in interest to either:
  - a) Assume the deceased borrower's loan to the extent permitted under state and federal law and terms of the loan; and
  - b) In the case where a successor in interest seeks a foreclosure prevention alternative, simultaneously apply to assume the loan and for a foreclosure prevention alternative that is offered by the loan lender or applicable loss mitigation rules.
- 8) Requires the servicer to allow the successor in interest to assume the loan if they qualify for a foreclosure prevention alternative.
- 9) Provides that a successor in interest shall have all the rights and remedies available under the California Homeowner Bill of Rights (HBOR).
- 10) Specifies, that in order to receive the protections of HBOR the successor in interest must meet the following criteria:
  - a) Be eligible to assume a deceased borrower's outstanding mortgage loan;
  - b) Wish to apply for a foreclosure prevention alternative in connection with the deceased borrower's loan;
  - c) Be either of the following:
    - i) The spouse, child, or grandchild of the deceased borrower; or,
    - ii) A person who occupies the property as his or her principal residence at the time of the deceased borrower's death.
- 11) Provides for the following enforcement mechanisms:
  - a) If a trustee's deed upon sale has not been recorded, a successor in interest may bring an action for injunctive relief. Any injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer has corrected and remedied the violation.
  - b) After a trustee's deed upon sale has been recorded, a mortgage servicer shall be liable to a successor in interest for actual economic damages resulting from a material violation. If the material violation is found to be intentional or reckless, or resulted from willful misconduct the court may award the successor in interest the greater of treble actual damages or statutory damages of \$50,000.
  - c) A prevailing successor in interest may be awarded reasonable attorney's fees and costs. A successor in interest is considered to be prevailing if they have obtained injunctive relief or damages.

- d) A servicer is not liable for a violation that it has corrected and remedied prior to recordation of the trustee's deed upon sale.
- 12) Provides the Department of Business Oversight and the Bureau of Real Estate with power to adopt regulations applicable to any entity or person under their respective jurisdictions that are necessary to carry out the provisions of this bill.
- 13) Defines "reasonable documentation" as copies of the following documents:
- a) In the case of a personal representative, letters as defined in Section 52 of the Probate Code.
  - b) In the case of devisee or an heir, a copy of the relevant will or trust document.
  - c) In the case of a beneficiary of a revocable transfer on death deed, a copy of that deed.
  - d) In the case of a surviving joint tenant, an affidavit of death of the joint tenant or a grant deed showing joint tenancy.
  - e) In the case of a surviving spouse where the real property was held as community property with right of survivorship, an affidavit of death of the spouse or a deed showing community property with right of survivorship.
  - f) In the case of a trustee of a trust, a certification of trust pursuant to Section 18100.5 of the Probate Code.
  - g) In the case of a beneficiary of a trust, relevant trust documents related to the beneficiary's interest.
- 14) Specifies that if the documents in #13 a) through g) are not available then "reasonable documentation" may include other written evidence of the person's status as a successor in interest.
- 15) Defines "Successor in interest" as a natural person who provides the mortgage servicer with notification of the death of the mortgagor or trustor and reasonable documentation showing that the person is any of the following:
- a) The personal representative, as defined in Section 58 of the Probate Code, of the mortgagor's or trustor's estate.
  - b) The devisee, as defined in Section 34 of the Probate Code, or the heir, as defined in Section 44 of the Probate Code, of the real property that secures the mortgage or deed of trust;
  - c) The beneficiary, as defined in Section 5608 of the Probate Code, on a revocable transfer on death deed;
  - d) The surviving joint tenant of the mortgagor or trustor; or

- e) The surviving spouse of the mortgagor or trustor if the real property that secures the mortgage or deed of trust was held as community property with right of survivorship pursuant to Section 682.1.
- 16) Exempts from its provisions a depository institution chartered under state or federal law, a person licensed under the California Finance Lenders Law, or the California Residential Mortgage Lending Act or a person licensed under the real estate law that during its immediate preceding annual reporting period foreclosed on 175 or fewer residential real properties, containing no more than four dwelling units that are located in California.
- 17) Makes the following findings and declarations:
- a) Beginning in 2008, California faced a foreclosure crisis, with rapidly dropping home values and skyrocketing job losses. Indiscriminate foreclosure practices of major mortgage servicers compounded the problem as they created a labyrinth of red tape, lost documents, and erroneous information, and then they started foreclosure proceedings while borrowers and their families were in the middle of applying for a loan modification.
  - b) The California Legislature responded with a first-in-the-nation HBOR, which requires mortgage servicers to provide borrowers a fair and transparent process, a single point of contact (SPOC), and the opportunity to finish applying for a loan modification before foreclosure proceedings can start. HBOR stabilized families, neighborhoods, and local communities by slowing down indiscriminate foreclosures.
  - c) Now, however, district attorneys and legal aid organizations are reporting an increasing number of cases in which mortgage servicers use a loophole in HBOR to foreclose on certain homeowners—people who survive the death of a borrower and have an ownership interest in the home but are not named on the mortgage loan. Most often, the “survivor” is the borrower’s spouse and is over 65 years of age.
  - d) When the surviving widow or widower, domestic partner, children, or other heirs attempt to obtain basic information about the loan from the servicer, they face the same kind of barriers and abuses—and, finally foreclosure—that convinced the Legislature to pass HBOR.
  - e) Home ownership is the primary avenue for most Americans to build generational wealth. Indiscriminate foreclosures on surviving heirs destroy a family’s ability to build for its financial future. Foreclosures also exacerbate the racial wealth gap—and overall wealth inequality—in society, and force seniors who want to “age in place” into the overheated rental market instead, with devastating health impacts.
  - f) Surviving heirs deserve the same transparency and opportunity to save their home as HBOR gave the original borrower. This act would stem a disturbing nationwide trend and help keep widows and widowers, children, and other survivors in their homes—without requiring mortgage servicers to do anything more than they already do for other homeowners.

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

**EXISTING FEDERAL LAW:**

- 1) Defines a due-on-sale clause, pursuant to the Garn-St. Germain Depository Institutions Act of 1982 (Garn St. Germain; 12 USC Section 1701j-3), as a contract provision which authorizes a lender, at its option, to declare due and payable sums secured by the lender's security instrument if all or any part of the property, or an interest therein, securing the real property loan is sold or transferred without the lender's prior written consent, and authorizes lenders to enter into and enforce real property loan contracts containing due-on-sale clauses. The existence of this federal act is the primary reason that existing mortgages must usually be fully paid off when a house is sold to a new owner.
- 2) Provides, pursuant to Garn-St. Germain, that a due-on-sale may not be enforced on a loan secured by residential real property containing fewer than five dwelling units, when that real property is transferred in any one of the following ways: a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; a transfer to a relative resulting from the death of a borrower; a transfer where the spouse or children of the borrower become an owner of the property; a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property. Because of these exceptions, lenders commonly allow successors in interest to assume an outstanding mortgage secured by property they obtain through one of the transfer mechanisms listed immediately above.

**EXISTING STATE LAW:**

- 1) Provides for HBOR, which contains numerous provisions intended to facilitate communication between mortgage servicers and borrowers regarding options for borrowers to avoid foreclosure. The following provisions apply to servicers with respect to first-lien mortgages secured by owner-occupied principal residences containing one- to four-dwelling units:
  - a) Servicers may not record a NOD until at least 30 days after making initial contact with a borrower to discuss options for that borrower to avoid foreclosure or, if contact with the borrower cannot be made, until at least 30 days after the servicer satisfies specified due diligence requirements to establish contact (Civil Code Section 2923.5 and Civil Code Section 2923.55; all further code section references are to the Civil Code).
  - b) Until January 1, 2018, servicers may not record a NOD before sending specified documents to delinquent borrowers informing them of certain rights and providing a toll-free telephone number that can be used by borrowers to identify nearby housing counseling agencies (Section 2923.55).
  - c) Until January 1, 2018, servicers that offer one or more foreclosure prevention alternatives must send the following to a borrower in writing, within five business days after recording a NOD, unless that borrower has previously exhausted the first lien loan

modification process: a statement that the borrower may still be evaluated for one or more alternatives to foreclosure; a statement informing the borrower whether an application is required to be considered for this alternative/these alternatives; and information on the means and process by which a borrower may obtain an application, if one is required (Section 2924.9).

- d) Until January 1, 2018, servicers must acknowledge receipt of any document received in connection with a first lien loan modification application within five days of receipt of that document (Section 2924.9).
- e) Once a borrower submits a complete first lien loan modification application, a servicer may not take the next step in the nonjudicial foreclosure process while that application is pending, as specified. If a borrower's first lien loan modification application is denied, servicers must send written notice of denial to the borrower, identifying the reasons for denial with specificity and informing the borrower how to appeal the denial, including the date by which the appeal must be submitted (Section 2923.6, 2924.10. and 2924.11).
- f) Before recording any one of several different types of documents that are required in the context of nonjudicial foreclosure, servicers must ensure that they have reviewed competent and reliable evidence to substantiate the borrower's default and the servicer's right to foreclose. Any of these documents that are recorded by or on behalf of a mortgage servicer must be accurate and complete and must be supported by competent and reliable evidence (Section 2923.17).
- g) Servicers must assign a SPOC upon request by any borrower who requests a foreclosure prevention alternative. The SPOC is either an individual or a team of personnel, each of whom has the ability and authority to undertake several specified responsibilities, and each of whom is knowledgeable about the borrower's situation and current status in the loss mitigation process. The requirement to provide a SPOC concludes when the servicer determines that all loss mitigation options offered by or through that servicer have been exhausted, or when the borrower's mortgage becomes current (Section 2923.7).
- h) Authorizes borrowers to bring judicial actions against servicers to enforce the aforementioned provisions. If a trustee's deed upon sale has not been recorded (i.e., if a foreclosure has not been completed), a borrower may bring an action for injunctive relief to enjoin an uncorrected, material violation of the aforementioned provisions; this injunction remains in place, and any trustee's sale is enjoined, until the court determines that the servicer has corrected and remedied the violation or violations giving rise to the action for injunctive relief. After a foreclosure is completed, a former borrower may bring an action for actual economic damages resulting from an uncorrected, material violation of any of the aforementioned provisions. Courts are authorized to award a prevailing plaintiff reasonable attorney's fees and costs for actions brought to enforce the aforementioned provisions; a plaintiff is deemed to have prevailed for purposes of HBOR if that plaintiff obtained injunctive relief or was awarded damages (Sections 2924.12 and 2924.19).

**FISCAL EFFECT:** The bill is keyed non-fiscal

**COMMENTS:**Need for the bill.

According to the author:

*California led the nation in 2012 with its Homeowners' Bill of Rights (HBOR), requiring a single point of contact and prohibiting dual-tracking of borrowers, a practice of driving owners to foreclosure even while working on loan modifications. HBOR is credited with having slowed down foreclosures in 2013 as servicers attended to the new homeowner protections. HBOR helps stabilize families, neighborhoods, and local economies. However, there's more to be done.*

*In California and across the country, legal aid organizations have documented that the very abuses HBOR prohibits are being endured by widows, widowers, and other survivors who are losing their homes to foreclosure because the mortgage servicer refuses to consider them for a loan assumption or modification. The servicers maintain that surviving homeowners who aren't listed on the mortgage note have no protections under HBOR, even though the intent of the bill was to protect all homeowners.*

*In the most common scenario, a surviving widow owns her home, but is not listed on its mortgage loan. She attempts to apply for a loan assumption and to get information on loan modification options, just as her spouse could have done under HBOR. At that point, she faces a mortgage servicer who exhibits the same problematic behaviors that convinced the legislature to pass HBOR: refusing to talk to the homeowner, creating a confusing labyrinth of processes, losing documents repeatedly, transferring responsibilities between multiple employees, giving inaccurate information, and foreclosing on the homeowner without ever considering her for a loan modification.*

*Unnecessary foreclosures devastate families' ability to build for their financial future. As homeownership remains the primary way that Americans build wealth for themselves and their offspring, our continued failure to protect surviving spouses and children only exacerbates the racial wealth gap in society. Further, foreclosures on survivors thwart the intent of property, and wills and estates laws. And, unnecessary foreclosures also are secret, silent killers. Seniors forced from their home are likely to suffer devastating health impacts, and with dramatically high and still rising rents across California, homelessness.*

*Surviving homeowners deserve a fair chance to take responsibility for their mortgage loan attached to their homes. They deserve the respect of receiving clear communication and accurate information, especially during the stressful time following the death of a loved one. SB 1150 clarifies the responsibilities of a lender when a borrower dies leaving a surviving homeowner who wishes to assume the loan.*

On June 27, 2012, the Conference Committee on the California Foreclosure Crisis passed HBOR in order to protect homeowners in the mortgage market, help keep families in their homes, and revive the state's economy following historic foreclosure rates and rampant abuse, fraud, and deception that caused more than one million Californian's to lose their homes. That bill package sought to: (1) stop the practice of "dual-tracking;" (2) establish a SPOC for homeowners with their lenders; and (3) mandate a chain of title of the property.

Generally speaking, HBOR creates requirements intended to facilitate communication between mortgage servicers and borrowers regarding options for borrowers to avoid foreclosure. HBOR restricts servicers from recording a NOD under California's non-judicial foreclosure process until at least 30 days after contacting a borrower to discuss options for that borrower to avoid foreclosure. HBOR requires servicers to send specified documents to delinquent borrowers informing them of their rights and to provide a toll-free telephone number that can be used by borrowers to identify nearby housing counseling agencies before recording a NOD. Importantly, once a borrower submits a loan modification application, the servicer is prohibited from taking any further steps in the non-judicial foreclosure process while that application is pending. If the loan modification application is denied, the servicer must send a written notice of denial to the borrower, identifying the reasons for the denial and informing the borrower how the denial decision may be appealed.

HBOR requires servicers to ensure that they have competent and reliable evidence to substantiate a borrower's default and the servicer's right to foreclose before recording documents in the non-judicial foreclosure process. HBOR also requires servicers to assign SPOC to any borrower who requests a foreclosure prevention alternative, and states that the contact must have authority to act on behalf of the servicer, as specified, and be knowledgeable about the borrower's situation and current status in the servicer's loss mitigation process. HBOR includes various consumer remedies for violations of its provisions, including treble and statutory damages.

AB 1150 seeks to extend the protections of HBOR to successors in interest as defined including a right to seek injunctive relief and economic damages under certain scenarios.

#### Existing Rules Concerning Successors in Interest.

Under regulations implementing the federal Real Estate Settlement Procedures Act (RESPA), effective January 10, 2014, servicers are required to have policies and procedures in place to, "upon notification of the death of a borrower, promptly identify and facilitate communication with the successor in interest of the deceased borrower with respect to the property secured by the deceased borrower's mortgage loan" (12 CFR 1024.38). Pursuant to the RESPA regulations, those policies and procedures must be reasonably designed to ensure that a servicer can do all of the following: (1) provide accurate information to a borrower regarding loss mitigation options available to that borrower; (2) identify with specificity all loss mitigation options for which a borrower may be eligible; (3) identify documents and information that a borrower is required to submit to complete a loss mitigation application; (4) provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option to servicer personnel that are assigned to assist the borrower; and (5) properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible, as specified.

These regulations, and servicers' responsibilities under them, were clarified in a bulletin issued by the federal CFPB prior to the operative date of the regulations ([http://files.consumerfinance.gov/f/201310\\_cfpb\\_mortgage-servicing\\_bulletin.pdf](http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf)). The following year, the CFPB also clarified that where a successor in interest obtains title to a dwelling and agrees to be added onto a mortgage secured by that dwelling, the lender is not required to evaluate that successor's ability to repay that mortgage using CFPB's Ability-to-Repay Rule ([http://files.consumerfinance.gov/f/201407\\_cfpb\\_bulletin\\_mortgage-lending-rules\\_successors.pdf](http://files.consumerfinance.gov/f/201407_cfpb_bulletin_mortgage-lending-rules_successors.pdf)) as the ability to repay rule is far more cumbersome and restrictive than

simply evaluating basic creditworthiness and affordability that is required by Fannie Mae and Freddie Mac for loan assumptions.

The RESPA rules are broadly applicable to all “federally-related mortgage loans,” which, generally speaking, include all single-family residential mortgages (both purchase money and refinanced mortgages, and both first and subordinate liens), which are made by state- or federally-regulated lenders.

Fannie Mae has also issued guidance around the successor in interest issue, which must be followed by entities that service loans owned or guaranteed by that government-sponsored enterprise. In a Lender Letter issued in February 2013, Fannie Mae requires servicers to “implement policies and procedures to promptly identify and communicate with the new property owner in connection with a property transfer that is an exempt transaction. These policies and procedures must allow the new owner to continue making mortgage payments and pursue an assumption of the mortgage loan as well as a foreclosure prevention alternative, if applicable. This includes a widow, executor, or administrator of the borrower’s estate, or other authorized representative of the borrower upon notification of the borrower’s death.” The Lender Letter’s reference to “exempt transaction” refers to transfers protected under Garn-St. Germain.

In its Lender Letter Fannie Mae goes on to say, “If the mortgage loan is delinquent and the new property owner is unable to bring the mortgage loan current but may be able to resolve the delinquency with a foreclosure prevention alternative and assume the mortgage loan, the servicer must collect a Borrower Response Package from the new property owner and evaluate the request as if they were a borrower. If the servicer determines that a foreclosure prevention alternative is appropriate, it must submit its recommendation to Fannie Mae for written approval. Fannie Mae will determine the terms of the foreclosure prevention alternative and any related assumption.”

Fannie Mae’s most recently-issued servicing guide reflects the guidance first issued in February 2013. Freddie Mac has issued similar guidance for entities that service mortgages which are owned or guaranteed by it (<http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bl11303.pdf>).

Finally, the Home Affordable Modification Program (HAMP), designed by the U.S. Department of the Treasury and applicable to many mortgages not owned or guaranteed by Fannie Mae or Freddie Mac, instructs servicers subject to its rules to consider non-borrower successors in interest for HAMP modifications as if they were borrowers and to suspend any ongoing foreclosure while doing so. The HAMP servicer handbook also states that “Non-borrowers who inherit or are awarded sole title to a property may be considered for HAMP even if the borrower who previously owned the property was not already in a Trial Payment Plan. Such titleholders may be considered for HAMP if they meet all applicable eligibility criteria. In this case, servicers should collect an Initial Package from the non-borrower who now owns the property and evaluate the request as if he or she was the borrower. The servicer should process the assumption and loan modification contemporaneously if the titleholder is eligible for HAMP and investor guidelines and applicable law permit an assumption of the loan.”

([https://www.hmpadmin.com/portal/programs/docs/hamp\\_servicer/mhahandbook\\_5.pdf](https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_5.pdf); see [Section 8.8](#)).

Pending Action from CFPB:

On October 15, 2013 CFPB issued Bulletin 2013-12 to provide guidance regarding the RESPA or Reg X and The Truth in Lending Act (TILA or Reg Z). This bulletin provided guidance for mortgage services on policies and procedures servicers must maintain regarding the identification of and communication with any successor in interest of a deceased borrower.

On December 15, 2014 CFPB announced changes to the Mortgage Servicing Rules and Reg Z and Reg X addressing many of the issues previously offered in Bulletin 2013-12. Among these proposed changes are three sets of rule changes with respect to successors in interest – persons who inherit or receive property when there is still an outstanding mortgage loan. First, the CFPB is proposing that all of the existing Mortgage Servicing Rules will apply to the successor once the servicer confirms that they are, in fact, a successor in interest. Second, the proposed amendments state how the determination of whether a person is a successor is made. Third, the proposal ensures that those confirmed as successors generally receive the same protections under the CFPB’s Mortgage Servicing Rules as the original borrower. The proposed new definition of successor in interest would include homeowners who receive property through inheritance from a family member or upon the death of a joint tenant, after a divorce or legal separation, through a family trust, or through a transfer from a parent to a child.

The background and justification for the proposed CFPB regulations are contained in Federal Register, Vol. 79, No. 240. In expanding the application of the mortgage servicing rules, CFPB provides that it is “proposing to apply all of the Mortgage Servicing Rules to successors in interest whose identify and ownership interest in the property have been confirmed by the servicer.” Furthermore, the rules are designed to require servicers to “maintain policies and procedures reasonable designed to ensure that the servicer can, upon identification of a potential successor interest, promptly provide to that person a description of the documents the servicer reasonably requires to confirm the person’s identity and ownership interest in the property...”

Summary of arguments in support:

SB 1150 is co-sponsored by the California Alliance for Retired Americans, California Reinvestment Coalition, and Housing and Economic Rights Advocates, and is supported by Attorney General Harris and numerous consumer advocacy, legal services, and housing rights organizations and unions, including the Consumer Federation of California, California Rural Legal Assistance, Nehemiah Corporation of America, CALPIRG, Western Center on Law & Poverty, SEIU California, UNITE HERE, UDW/AFSCME Local 3930, California Professional Firefighters, Public Law Center, Public Counsel, Justice in Aging, Institute on Aging, Family Caregiver Alliance, Capital Impact Partners, Renaissance Entrepreneurship Center, Bay Area Legal Aid, Fair Housing of Marin, Neighborhood Housing Services of Los Angeles County, Project Sentinel, Rural Community Assistance Corporation, The Arc and United Cerebral Palsy California Collaboration, and others.

*Currently, widows, widowers, and certain heirs are being denied a fair chance to remain in their homes, as mortgage servicers deny them communication, information, and the*

*opportunity to be considered for a loan modification. This issue presents itself when a family member who is the sole borrower named on a home loan passes away. The surviving family members who wish to continue paying the mortgage loan, may have difficulty assuming the deceased borrower's loan and/or affording the current mortgage payment with the loss of the deceased's income. Surviving family members may then seek a loan assumption and modification, only to be refused by the mortgage servicer because their name is not on the loan, even when the surviving family member has a legal property interest in the home. During this difficult and unfortunate period when the loss of a loved one is still fresh, family members should not have to deal with the added stress of losing their homes.*

*In 2012, with the passage of the Homeowner Bill of Rights (HBOR), the state of California provided strong due process protections to similar vulnerable homeowners. But banks and loan servicers argue that HBOR does not protect surviving spouses and other successors in interest. The effect of all this is that survivors and successors in interest have FEWER rights and LESS ability to retain their homes than other homeowners. This is a horrible outcome that the Legislature did not foresee when HBOR was debated and passed. This is why support SB 1150. The bill will provide surviving family members with the opportunity to receive basic information about the loan, request an assumption and loan modification, and be given a fair consideration as to whether they will be able keep their home.*

*Despite federal Consumer Financial Protection Bureau guidance regarding communications with successors-in-interest, mortgage servicers continue to refuse to communicate with successors, require onerous or nonexistent documentation from successors, and refuse to suspend foreclosure proceedings to explore alternatives, which can result in unnecessary loss of family homes.*

#### Arguments in opposition:

A coalition comprised of mortgage lenders, other financial services providers involved in mortgage lending and securitization, the California Chamber of Commerce, Civil Justice Association of California, and California Citizens Against Lawsuit Abuse submitted a group letter of opposition to the bill, citing several concerns.

*Senate Bill 1150 is not a modest bill. The measure creates unknowable risk where third parties not known to the mortgage servicer at some point in the future attempt to seek relief under SB 1150's provisions. The measure imposes significant new obligations and burdens on mortgage servicers. The measure will cause a delay in collateral recovery which may leave properties in disrepair. Significant legal liability will be visited upon mortgage servicers attempting to comply with an unclear mandate.*

*The ramifications of this measure are exacerbated by the overlap and conflict that will result from the failure to wait for the CFPB's regulations. If SB 1150 is enacted, mortgage servicers will confront two standards, one state and one federal and will be left to interpret which rule, or portion thereof, to follow. Failure to choose correctly will lead to alleged violations. Indicating that SB 1150 will "align" with federal law is not feasible and begs the question of why a state law is needed if the goal is to align with the federal law.*

*The measure forces a mortgage servicer to cause the successor in interest to assume the loan without clarifying whether the mortgage servicer can evaluate the successor in interest's*

*creditworthiness. This mandates a credit decision without the opportunity to appropriately underwrite. This is expressly prohibited by §341 of the federal Garn-St. Germain Act, which explicitly provides that all delinquency remedies are governed by the mortgage contract, and not by a state law.*

*It is also notable that the measure is not limited to widows and orphans and instead applies to any natural person that is a personal representative, beneficiary of a revocable transfer on death deed, a joint tenant, or a trustee or beneficiary, all of which may include individuals without any familial relation to the deceased borrower.*

*As drafted, this measure specifically contemplates that “there may be more than one successor in interest.” Yet, the measure fails to adequately inform the mortgage servicer what is necessary to comply with the law when there are multiple successors in interest. Must a mortgage servicer communicate with one or all of the successors in interest? May the mortgage servicer communicate with the successors in interest separately or collectively? Must the mortgage servicer furnish all required information regarding the deceased borrower’s loan to one or all the successors in interest? Must the mortgage servicer assign one single point of contact or must each successor in interest have their own single point of contact? How does the mortgage servicer evaluate multiple successors in interest for consideration of a loan modification and/or loan assumption? Must the mortgage servicer underwrite them individually or collectively? These are just a few questions for which answers have not been provided.*

#### Discussion & Amendments:

Supporters of this bill have provided case studies concerning spouses or children residing in a home having monumental difficulties communicating with their mortgage loan servicer when the borrower on the loan has passed away. These stories are terrible to read as successors in interest have been refused even basic information about the mortgage loan and next to no possibility of receiving a loan modification if they qualified for one. However, while these cases are problematic, and no one should make excuses for the poor treatment of surviving spouses or children in relation to their mortgage loan servicer, SB 1150 goes further than simply ensuring that successors in interest receive the proper information about the mortgage loan. In some cases the motivation of the bill and the actual implementation of the language diverge.

The bill contains several issues that need to be revision. Where possible, staff has suggested potential fixes for the identified issues.

- 1) The CFPB is expected to release its final servicing rules that will address successor in interest issues sometime in July of this year. The legislative findings and declarations of SB 1150 state, "It is the intent of the Legislature that this act work in conjunction with federal CFPB servicing guidelines." It is unclear how the CFPB servicing rules are to work with SB 1150 and the statement "in conjunction" provides no great clarity as to the meaning of that phrase. Staff recommends including a clear statement that compliance with the CFPB rules would be deemed compliance with the provisions proposed by SB 1150. This is not unlike provisions in HOBR, specifically Civil Code Section 2924.12 that provides that a signatory to a consent judgment entered in the case entitled *United States of America et al. v. Bank of America Corporation et al.* is liable for certain violations under HOBR.

Therefore staff recommends the following language be added to the bill:

**Any mortgage servicer, mortgagee, or beneficiary of the deed of trust or an authorized agent of such person who complies with the relevant provisions of relating to successors in interest of 12 C.F.R. Part 1024, known as Regulation X, and 12 C.F.R. Part 1026, known as Regulation Z, as those regulations are amended by the Final Servicing Rules issued by the Consumer Financial Protection Bureau in 78 Federal Register 10,696 on February 14<sup>th</sup>, 2013 and any amendments thereto, is deemed to be in compliance with this section.**

- 2) The criteria specified on page 5 lines 22-31, is unclear as to the application of successor in interest status as on page 7, lines 27-40 and page 8, lines 1-5 is a definition of "successor in interest" that is broader than the "criteria" of a successor in interest that occurs back on page 5. This language is not limited to those residing in the home and could include children or grandchildren that no longer live in the home or that may have never lived in the home due to various family circumstances. This further exacerbates the ability of competing to successors not even living in the home to create confusion regarding the mortgage and the property. Therefore the committee may wish to recommend using the "criteria" for a successor interest as the definition of those covered by this bill. The revised definition below also includes those parties that are currently considered for loan assumption under mortgage servicer investor guidelines, as discussed in more detail later in this analysis.

To create clarity on this issue the following amendments are necessary:

- a) Strike the successor in interest criteria on page 5, lines 22-31.
- b) Revise definition of "successor in interest" by striking lines, 31-40 on page 7, and lines 1-5 on page 8 and then on page 7, line 30, after "following" insert, **The spouse, domestic partner, parent, grand-parent, adult child, or adult grandchild, or adult sibling of the deceased borrower, who occupied the property as his or her principal residence within the last six continuous months prior to the deceased borrower's death**
- 3) Once a person is deemed a successor in interest, which happens upon the claimant presenting "reasonable documentation" that is not subject to review, the servicer must allow the successor to assume the deceased borrower's loan. The bill is drafted in such a way that this assumption is required without a determination of whether the successor in interest can afford the mortgage which could facilitate the transfer the mortgage to someone with no ability to repay the mortgage or ability to qualify for a mortgage loan modification. Fannie Mae and Freddie Mac are the investors for well over 60% of the residential mortgage market. Their servicing guidelines, which must be followed by mortgage loan servicers servicing Fannie Mae and Freddie Mac specify that if a transferee, in this case a successor in interest, wishes to assume the mortgage loan they must determine the credit worthiness of transferee (Section 8406.4 of the Single Family Seller/Servicing Guide). Under these guidelines a protected transferee as established in Garn-St. Germain may continue to pay on the existing loan without assuming the loan which would not trigger a requirement to determine credit worthiness as the transferee is paying on the loan without assuming the underlying debt. However, the guidelines are clear that in order to assume the loan credit qualification is necessary. The committee is also in receipt of a letter dated May 30<sup>th</sup>, 2016 from the general counsel of the Federal Housing Finance Agency, currently the conservator for Fannie Mae and Freddie Mac that provides, "Servicers must not impose credit qualifying criteria on the

transferee *unless the new owner desires to assume the loan or seek loss mitigation...*(emphasis added)"

Therefor the committee may wish to consider the following changes to the language on page 5, lines 1-13:

a) Strike lines 1-13 on page 5 and insert the following:

**(1) Assume the deceased borrower's loan subject to an evaluation of the creditworthiness of the successor in interest consistent with the appropriate investor requirements and guidelines.**

**(2) If the successor in interest qualifies for the foreclosure prevention alternative, the servicer shall allow the successor in interest to assume the loan subject to an evaluation of the creditworthiness of the successor in interest consistent with the appropriate investor requirements and guidelines.**

**(3) Where a successor in interest of an assumable loan also seeks a foreclosure prevention alternative, the mortgage loan servicer shall allow the successor in interest to simultaneously apply to assume the loan and for a foreclosure prevention alternative that is offered by the mortgage loan servicer.**

This language provides additional points of clarification necessary to ensure appropriate loan assumption. In order for a borrower, or in this case a successor in interest to be considered for a loan modification they must present documentation of some economic distress, whether temporary or long-term and the ability to afford a modified mortgage loan payment. For example, HOBR, under Civil Code 2920.5 provides that a "borrower" for consideration of the protections provided under HOBR is considered someone "potentially eligible" for a loan modification under certain circumstances. The current version of SB 1150 is not clear that the successor in interest seeking loss mitigation must be potentially eligible. The amendments in sub a) above clarify this by including the language "If the successor in interest qualifies..." This will ensure that a mortgage loan servicer is not required to provide a loan modification to someone who does not qualify for a modification.

**Prior and Related Legislation:**

AB 244 (Eggman), 2015: Would have included successors in interest, as defined, within the HBOR definition of borrower and thus provided those successors with all of the rights that borrowers possess under that law. Never taken up by its author in the Assembly Banking & Finance Committee.

AB 278 (Eng et al., Chapter 86, Statutes of 2012) and SB 900 (Leno et al., Chapter 87, Statutes of 2012): Enacted comprehensive mortgage loan servicing reforms, established mortgage loan borrower protections, and modified California's nonjudicial foreclosure process. Although certain provisions sunset on January 1, 2018, the majority remain in force past that sunset date.

SB 7 (Corbett), Chapter 4, 2009-2010 Second Extraordinary Session, and AB 7 (Lieu), Chapter 5, 2009-2010 Second Extraordinary Session: Required mortgage loan servicers that lacked comprehensive mortgage loan modification programs, as defined, to wait an additional 90 days before recording a notice of sale on mortgages or deeds of trust, which were recorded from January 1, 2003 to January 1, 2008, and were secured by single-family, owner-occupied

residential real property.

SB 1137 (Perata), Chapter 69, Statutes of 2008: Established the contact requirements summarized in Existing Law 1a. Sunset on January 1, 2013 (though its provisions were extended indefinitely through enactment of HBOR).

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Alliance for Retired Americans (CARA) – Co-sponsor  
California Reinvestment Coalition (CRC) – Co-sponsor  
Housing and Economic Rights Advocates (HERA) – Co-sponsor  
AARP California  
AIDS Legal Referral Panel (ALRP)  
Alameda County Board of Supervisors  
Bay Area Legal Aid (BayLegal)  
Burbank Housing Development Corporation  
California Attorney General  
California District Attorneys Association (CDAА)  
California Nurses Association  
California Professional Firefighters (CPF)  
California Rural Legal Assistance, Inc.  
California State Council of the Service Employees International Union (SEIU)  
CALPIRG  
Capitol Impact Partners  
Center for California Homeowner Association Law (CCHAL)  
Center for Responsible Lending (CRL)  
Central Valley Realtist Board (CVRB)  
Community Legal Services in East Palo Alto  
Consumer Attorneys of California  
Consumer Federation of California (CFC)  
Consumers Union  
County of Alameda  
Courage Campaign  
Fair Housing Council of San Fernando Valley Council  
Fair Housing of Marin  
Family Caregiver Alliance  
Housing California  
Inland Fair Housing and Mediation Board (IFHMB)  
Institute on Aging Elder Abuse Prevention Program  
Justice in Aging  
Law Foundation of Silicon Valley  
Legal Aid Foundation of Los Angeles (LAFLA)  
Legal Services of Northern California (LSNC)  
Los Angeles County Consumer & Business Affairs (DCBA)  
Los Angeles County Democratic Party (LACDP)  
Montebello Housing Development Corporation (MHDC)

National Center for Lesbian Rights (NCLR)  
National Council of La Raza (NCLR)  
National Housing Law Project  
Nehemiah Corporation of America  
Neighborhood Housing Services of Los Angeles County (nhs)  
NeighborWorks Homeownership Center Sacramento Region  
Non-Profit Housing Association of Northern California (NPH)  
Peoples' Self-Help Housing  
Project Sentinel  
Public Counsel  
Public Law Center (PLC)  
Renaissance Entrepreneurship Center  
Retired Public Employees Association (RPEA)  
Rural Community Assistance Corporation (RCAC)  
Shalom Center for T.R.E.E. of Life  
Tenants Together  
The Arc  
Unite Here  
United Cerebral Palsy California Collaboration  
United Domestic Workers of America – AFSCME local 3930  
Valley Economic Development Center (VEDC)  
Valley Industry and Commerce Association (VICA)  
Western Center on Law & Poverty  
1 Individual

**Opposition**

American Securitization Forum  
California Bankers Association  
California Building Industry Association  
California Business Roundtable  
California Chamber of Commerce  
California Citizens against Lawsuit Abuse  
California Community Banking Network  
California Financial Services Association  
California Land Title Association  
California Mortgage Association  
California Mortgage Bankers Association  
Civil Justice Association of California  
Consumer Mortgage Coalition  
Securities Industry and Financial Markets Association  
United Trustees Association

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