

Date of Hearing: June 18, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE  
Monique Limón, Chair  
SB 818 (Beall) – As Amended March 22, 2018

**SENATE VOTE:** 24-12

**SUBJECT:** Mortgages and deeds of trust: foreclosure

**SUMMARY:** Re-enacts certain provisions of the Homeowners Bill of Rights without the sunset provision originally contained within SB 900 (Leno), Chapter 87, Statutes of 2012. Existing law provides a number of protections for homeowners facing the nonjudicial foreclosure of their owner-occupied, single family residence.

The following provisions and requirements apply only to larger home loan servicers (i.e., one that foreclosed on more than 175 single family homes during the prior reporting year, as specified). Specifically this bill:

- 1) Provides a prohibition against recording a Notice of Default (NOD) prior to engaging in borrower outreach.
- 2) Requires additional information be sent to the homeowner within five business days after recording a NOD.
- 3) Requires loan servicers to provide written acknowledgment of all documents submitted in connection with first lien loan modification applications.
- 4) Requires the cessation of the foreclosure process, once a complete mortgage loan modification application is submitted.
- 5) Requires loan servicers to consider multiple loan modification applications from the same borrower.
- 6) Requires a loan servicer to send a written notice of denial to the borrower, identifying the reasons for denial, describing other foreclosure prevention alternatives for which the borrower may be eligible, and providing a list of steps the borrower must take in order to be considered for those options.
- 7) Requires a single point of contact (SPOC) be assigned to any borrower who requests a foreclosure prevention alternative.
- 8) Prohibits foreclosure while a homeowner is compliant with a written foreclosure prevention alternative.
- 9) Requires a written copy of fully executed foreclosure avoidance agreement be provided to the borrower.

- 10) Prohibits fees to apply for loan modification, as well as, late fees while an application is pending.
- 11) Requires that if a larger servicer approves a first lien loan modification or other foreclosure prevention alternative in writing and the servicing of that borrower's loan is transferred or sold to another larger servicer, the subsequent servicer must continue to honor any previously approved foreclosure prevention alternative.
- 12) Requires a borrower be notified regarding postponed trustee sale date whenever a trustee sale is postponed for at least ten business days. This provision applies to all loan servicers regardless of size.
- 13) Maintains current prohibition against robo-signing but enhances the penalties for violating those rules. This provision applies to all loan servicers regardless of size.
- 14) Prohibits a smaller servicer (i.e., one that foreclosed on 175 or fewer single family homes during the prior reporting year, as specified) from taking the next step in the foreclosure process while a complete first lien loan modification application is pending, until the borrower has been provided with a written determination regarding his or her eligibility for the requested loan modification. Once a foreclosure prevention alternative is approved in writing, the servicer may not take the next step in the foreclosure process while the borrower is in compliance with the terms of the foreclosure prevention alternative.

**EXISTING LAW:** SB 900 (Leno), Chapter 87, Statutes of 2012, commonly known as the Home Owners Bill of Rights (HBOR) provides a number of protections for homeowners facing the nonjudicial foreclosure of their owner-occupied, single family residence as follows:

- 1) *Prohibition against recording a notice of default (NOD) prior to engaging in borrower outreach:* A mortgage servicer may not record a NOD until at least 30 days after making contact with a borrower to discuss options for avoiding foreclosure or undertaking due diligence, as specified, to establish borrower contact (Civil Code Section 2923.5).
- 2) *Prohibition against recording a NOD or proceeding to the next step in the foreclosure process while a complete first lien mortgage loan modification is being evaluated:* Once a borrower submits a complete first lien loan modification application, that borrower's mortgage servicer may not record a NOD or take the next step in the foreclosure process, while that application is pending, and until the borrower has been provided with a written determination approving or rejecting his or her modification application (Civil Code Sections 2923.5 and 2924.11).
- 3) *Cessation of the foreclosure process, once a foreclosure prevention alternative is approved:* If a servicer approves a foreclosure prevention alternative in writing, the servicer may not take the next step in the foreclosure process while the borrower is in compliance with the terms of that alternative, as specified (Civil Code Section 2924.11).
- 4) *Written notice of denial required:* If a borrower's first lien loan modification application is denied, the servicer must send a written notice of denial to the borrower, identifying the reasons for denial with specificity and informing the borrower he or she may obtain additional documentation supporting the denial decision upon written request (Civil Code Section 2924.11).

- 5) *Single point of contact (SPOC); applies only to larger servicers:* A larger servicer (i.e., one that foreclosed on more than 175 single family homes during the prior reporting year, as specified) must assign a SPOC upon request from 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 responsibilities specified in statute, and each of whom is knowledgeable about the borrower's situation and current status in the loss mitigation process. The requirement to offer 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 account becomes current (Civil Code Section 2923.7).
- 6) *Prohibition against robo-signing:* Before recording any one of several different types of documents that are required in the context of nonjudicial foreclosures, a servicer must ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the servicer's right to foreclose. All foreclosure-related documents recorded by or on behalf of a mortgage servicer must be accurate and complete and supported by competent and reliable evidence (Civil Code Section 2924.17).
- 7) *Enforcement:* State regulators may enforce violations of the aforementioned rules as violations of state lending laws. Private rights of action are also authorized for material violations of the aforementioned requirements that go uncorrected by a servicer. Borrowers may bring actions for injunctive relief prior to the completion of a trustee sale and for actual economic damages following a trustee sale. Successful plaintiffs, defined as those who receive injunctive relief or are awarded damages, are also entitled to reasonable attorney's fees and costs (Civil Code Section 2924.12).

**FISCAL EFFECT:** According to Senate Appropriations Committee, pursuant to Rule 28.8, costs associated with this bill are minor and absorbable.

**COMMENTS:** The goal of SB 818 is to put back into statute the provisions of the Home Owners Bill of Rights that were subject to sunset provisions on December 31, 2017. The bill is co-sponsored by the National Housing Law Project (NHLP) and Housing and Economic Right Advocates (HERA). According to NHLP, "It is imperative that California act now to restore these important protections in order to keep families with modest incomes in their homes both today—when the state is in the midst of an affordable housing crisis—and in the event of a future spike in mortgage delinquencies and foreclosure activity."

A central issue arising out of the mortgage crises was the inability of homeowners to engage mortgage servicers in a meaningful way to prevent foreclosure on their home. The prohibition of "Dual tracking", a process where a mortgage servicer moves toward a foreclosure action while simultaneously engaging a home owner on alternatives to foreclosure, is a key example of the consumer protections contained in SB 900 (see existing law section above) that are being reinstated through SB 818.

Another key provision of the original authorizing legislation was a 5 year sunset date. Given the nature of the mortgage crisis at the time it seems reasonable the Legislature would want an opportunity to revisit and review the significant consumer protection provisions being enacted and therefore placed a 5 year sunset on the provisions. However, a difference in interpretation of the rationale for the inclusion of the sunset remains. For many in the mortgage lending and servicing industry the sunset was not included to ensure future review of the provisions of SB 900, but rather, the sunset was included to ensure that the provision of the bill would be

temporary. This view sees the Home Owners Bill of Rights as a temporary agreement for a temporary mortgage crisis. Setting aside differing views on the rationale for the inclusion of the sunset date, it is instructive to remember that it always remains the right of the Legislature to revisit and review any decision made by prior Legislatures (within constitutional limits).

Supporters, including the California Reinvestment Coalition, California Low-Income Consumer Coalition, Consumers Union, California Labor Federation, Rural Community Assistance Corporation, and many other consumer advocacy groups, legal aid organizations, and housing preservation groups sent letters of support in which they state, SB 818 “will ensure that Californians have a fair chance of keeping their homes when the going gets tough...Homeownership strengthens communities and provides family stability. Homeownership remains the primary way that Americans build wealth for themselves and their families. When families are facing hard times, they should have the opportunity to explore alternatives to foreclosure. At the very least, they must be guaranteed a fair and transparent process to follow. HBOR provides that guarantee, helping stabilize families, neighborhoods, and local economies. SB 818 provides protections that have been proven to give California’s economically vulnerable families a fair chance to hold on to their homes.”

Opposition groups continue to work with the author’s office to include provisions that will allow them to remove their opposition. Areas under continued discussion include, but are not limited to:

- 1) Allowing a mortgage servicer to satisfy due diligence telephone outreach requirements under current law if the borrower has provided notice in writing that they wish the mortgage servicer to cease communication.
- 2) Providing a cutoff of 14 days before the foreclosure sale where an application will no longer be considered for foreclosure prevention.
- 3) Include a safe harbor where compliance with federal law is deemed compliance with state law.

At the time of the writing of this analysis these talks were ongoing; therefore groups in opposition remain listed in the Opposition section below.

#### **REGISTERED SUPPORT / OPPOSITION:**

Aarp California  
California Alliance For Retired Americans  
California Asian Pacific Islander Chamber Of Commerce  
California Asset Building Coalition  
California Department Of Justice  
California District Attorneys Association  
California Labor Federation  
California Low-income Consumer Coalition  
California Nurses Association  
California Reinvestment Coalition  
California Rural Legal Assistance Foundation, Inc.  
Calpirg, California Public Interest Research Group

Center For Responsible Lending  
Center For Sustainable Neighborhoods  
City Of Sacramento  
City Of West Hollywood  
Consumer Attorneys Of California  
Consumers Union  
East Bay Community Law Center  
Elder Law And Advocacy  
Fair Housing Advocates Of Northern California  
Fair Housing Council Of Riverside County, Inc.  
Faith And Community Empowerment  
Harouni Law Group  
Housing & Economic Right Advocates  
Innovation & Sustainability Pac  
Law Foundation Of Silicon Valley  
Law Offices Of R. Grace Rodriguez  
Mission Economic Development Agency  
National Nurses United  
Neighborhood Partnership Housing Services Inc  
New Economics For Women  
Public Counsel  
Public Law Center  
Richmond Neighborhood Housing Services Inc  
Rural Community Assistance Corporation  
Santa Clara County Board Of Supervisors  
Silicon Valley Community Foundation  
State Building & Construction Trades Council Of California  
Sternberg Law Group  
Udw Homecare Providers Union  
Unidosus  
Vantis Law Firm  
Western Center On Law And Poverty

### **Opposition**

American Securitization Forum  
California Bankers Association  
California Chamber of Commerce  
California Financial Services Association  
California Land Title Association  
California Mortgage Bankers Association  
Civil Justice Association of California  
United Trustees Association

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