

Date of Hearing: April 28, 2014

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Roger Dickinson, Chair

AB 1770 (Dababneh) – As Amended: March 28, 2014

SUBJECT: Real property liens: request to terminate home equity line of credit.

SUMMARY: Specifies a process for termination of a Home Equity Line of Credit (HELOC). Specifically, this bill:

- 1) States that on receipt of a written request from an authorized person to terminate a HELOC (revolving line of credit secured by a mortgage or deed of trust), the lender shall do all of the following:
  - a) Terminate the borrower's right to obtain funds from the HELOC;
  - b) Apply all sums subsequently paid by or on behalf of the borrower in connection with the HELOC to the satisfaction of the HELOC and other sums secured by the related revolving line security instrument; and,
  - c) When the balance becomes zero on the HELOC which is secured by the security instrument, satisfy the related revolving line security instrument.
- 2) Provides that the equity line of credit shall contain, at least, the following:
  - a) Name of each borrower;
  - b) The account number; and,
  - c) Street address of the property.
- 3) Defines "authorized person" as a licensed title insurance company, underwritten title company, or escrow company.
- 4) Provides that "receipt of written request" includes confirmation by fax, email, or paper copy sent by certified mail.
- 5) Requires that the written request to terminate the HELOC shall be provided to the borrower and shall be accompanied by language explaining the reason for the cancelation and the rights and responsibilities of the borrower.

EXISTING LAW requires, under Civil Code Section 2941, for execution and recordation of a reconveyance in order to show that the lien has been satisfied.

FISCAL EFFECT: None

COMMENTS:

According to the author's office this bill is needed for the following reasons:

*Right now, if a borrower has a home equity line of credit (HELOC) secured by a lien on his house, he/she is supposed to shut down the HELOC loan and not draw down any money on the loan if he/she is selling or refinancing his/her house. If the lender fails to close the HELOC during escrow and money is drawn on the HELOC, the underlying lien and loan become the debt of the innocent buyer.*

*Many sellers don't realize their line of credit (HELOC) is secured by a lien on their home. Wanting money they sometimes draw on the HELOC loan during escrow or immediately following sale of their house, resulting in the underlying HELOC loan and lien becoming the obligation of the new buyer because the lien follows the real property unless it is extinguished.*

*Other sellers are unscrupulous and draw on the HELOC and run up the debt knowing that once they sell the house and move it will be difficult if not impossible to locate them and secure repayment, especially if the borrower no longer has any appreciable assets. Chasing down and collecting on these debts is very costly and problematic for new homebuyers, HELOC lenders and title companies.*

*Further complicating matters, since many HELOC lenders are large corporations and unaware that their HELOC borrowers are in escrow, some HELOC lenders are actually marketing to their customers to draw on the HELOC at the very same time the title company is attempting to help the borrower sell his or her house and shut down the HELOC. Thus, HELOC borrowers sometimes draw on the HELOC in escrow when they shouldn't. AB 1770 will create a standardized written request that also helps to educate the borrower that they cannot draw on the HELOC loan.*

A HELOC is secured by the borrower's property and the lien associated with that loan will follow the property until it is paid back. Currently, when title and escrow companies handle the escrow they contact the HELOC lender for a payoff statement that will tell the title company the amount of money needed in escrow to pay off the HELOC loan. Often this process is automated by the larger financial institutions so that the payoff statement is automated but the HELOC is not automatically shut down.

A potential problem with a home sale that involves a HELOC is that the borrower could draw down from their HELOC during the escrow or immediately after the home is sold, but the liability for the loan would follow the new purchaser of the property. This could be a result of confusion on the part of the HELOC borrower who may not understand that the loan follows the property. In other cases it could be an outright purposeful decision on the part of the HELOC borrower. AB 1770 is intended to provide a standardized process to terminate a HELOC when the home is in escrow so that the HELOC will not inadvertently become the liability of the subsequent homeowner.

According to the latest Equifax *National Consumer Credit Trends Report* the total number of new HELOCs is 71,600, an increase of 10% from same time a year ago. The balance of newly originated HELOCs was up 18.4%, from \$6.2 billion to \$7.3 billion. The total outstanding

balance of existing HELOCs in March 2014 decreased 6.5% from same time a year ago, the report says. Of total severely delinquent balances, 69% are from loans originated from 2005-2007. The total balance of severely delinquent loans in March 2014 is slightly more than \$8 billion, a five-year low. This current market of HELOCs is quite small compared to pre-foreclosure crisis numbers. Many of the HELOCs issued prior to the foreclosure crisis are close to coming due. Most HELOCs allow the borrower to take out money against their home for the first ten years without making any payments. Over the next 20 years that balance must be paid off. For HELOCs issued during the housing price appreciation boom that peaked in 2006 those loans are coming due between 2014 and 2018. This surge accounts for \$208 billion in HELOCs. This wave is so large that the Office of Comptroller of Currency has urged national banks to adopt policies to address this onslaught. Many institutions are reaching out to borrowers in advance of due dates to discuss refinance options.

### **Amendments:**

As currently drafted, AB 1770 may lead to more confusion. The language uses terms and phrases that are not common in this area of code. In order to clarify the intent of the bill and remove unclear terms committee staff recommends the following amendments:

1     SECTION 1. Section 2941.8 is added to the Civil Code, to read:

2     2941.8. (a) Upon receipt of a written request from an  
3     authorized person to terminate a ~~revolving~~ **equity** line of credit ~~secured~~  
4 ~~by a mortgage or deed of trust, the lender shall do all of the~~  
5     following:

6     (1) Terminate the borrower's right to obtain advances under  
7     the borrower's ~~revolving~~ **equity** line of credit.

8     (2) Apply all sums subsequently paid by or on behalf of the  
9     borrower in connection with the ~~revolving~~ **equity** line of credit to the  
10    satisfaction of the ~~revolving~~ **equity** line of credit. ~~and other sums secured~~  
11 ~~by the related revolving line security instrument.~~

12 ~~(3) When the balance of all outstanding sums secured by the~~  
13 ~~related revolving line security instrument becomes zero, satisfy~~  
14 ~~the related revolving line security instrument.~~

**(3) Reconvey the mortgage or deed of trust when the equity line of credit has zero balance outstanding.**

15    (b) ~~No particular phrasing is required in the~~ **The** written request  
16    provided to the lender to terminate an equity line of credit, ~~but~~  
17    shall contain at least the following:

18    (1) The name of each borrower.

19    (2) The account number of the equity line of credit.

20    (3) The street address of the property, if appropriate.

21    (c) For purposes of this section "authorized person" includes  
22    a licensed title insurance company, underwritten title company,  
23    or controlled escrow company, as defined in Sections 12340.4,  
24    12340.5, and 12340.6, respectively, of the Insurance Code, or an  
25    escrow company as used in the Financial Code **who is acting on behalf**  
**of the borrower.**

26    (d) For purposes of this section, "receipt of a written request" includes confirmation **delivered by first-class mail, registered or certified mail, express mail, overnight delivery by an**

express service carrier, electronic mail, facsimile, or other electronic means. ~~fax, email, or paper copy sent by certified mail.~~

(e) For purposes of this section "equity line of credit" means a revolving line of credit secured by a mortgage or deed of trusts.

29 (e) A written request to terminate ~~a revolving~~ an equity line of credit  
30 ~~secured by a mortgage or deed of trust~~ from an authorized person

1 shall be provided to the borrower and be accompanied by the  
2 following language:

3

4 "NOTICE TO BORROWER"

5 You have a home equity line of credit with \_\_\_\_\_, secured by a  
6 mortgage or deed of trust, and lien, on real property located at  
7 \_\_\_\_\_.

8 Our company is handling the escrow for your transaction. We  
9 are sending the attached notice to your lender, requesting cancelation ~~that~~  
10 of your home equity line of credit, be terminated. Our reason for  
11 making this request is: \_\_\_\_\_.

12 When your lender receives our request, your lender will  
13 ~~terminate and~~ close your home equity line of credit, and you will  
14 no longer be able to obtain credit advances. However, this notice to cancel ~~termination~~  
15 ~~of your home equity line of credit does not release you from liability~~  
16 ~~for amounts owed under the account. All sums your lender~~  
17 ~~subsequently receives in connection with your home equity line of~~  
18 ~~credit, Any funds sent to your lender in connection with your home equity line of credit,~~  
19 ~~including any sums funds we may send to your lender, shall will be~~  
20 ~~the balance of your account becomes zero, your lender will be~~  
21 ~~required to remove the lien against the property that is connected to the~~  
22 ~~home equity line of credit. mortgage or deed of trust as a matter of~~  
23 ~~public record.~~

23 If you have questions about this notice or our action, or believe you have received this  
notice in error  
please

24 contact \_\_\_\_\_ by calling us at \_\_\_\_\_ or  
25 writing to us at \_\_\_\_\_.

26

27 \_\_\_\_\_  
(Name of Company)

### Outstanding Issues:

Staff believes that the aforementioned amendments should assist with clarification and operational issues. Should AB 1770 move forward the author and sponsor need to resolve an additional outstanding issue not addressed in the amendments. In the event that escrow falls apart for the borrower the language in AB 1770 does not contemplate how to unwind the cancellation of the HELOC. For example, John Doe wants to sell his home and in the process payoff his HELOC. He finds a buyer and they enter escrow. At some point during escrow one of the parties backs out of the deal. The wording of AB 1770 does not address this scenario so it is unclear what would happen if the request to cancel the HELOC has already begun to be

processed. Would the HELOC cancellation process unwind itself if escrow fell apart? It is unclear based on the current language and given the automation of large national banks it is very likely that once this process has started that it would be very difficult to unwind.

REGISTERED SUPPORT / OPPOSITION:

Support

California Land Title Association (Sponsor)

Opposition

None on file.

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