Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Timothy Grayson, Chair
SB 455 (McGuire) – As Amended May 25, 2023

SENATE VOTE: 40-0

SUBJECT: State of emergency: mortgage servicers: property repair

SUMMARY: Provides responsibilities for transferor and transferee mortgage servicers related to a mortgage secured by real property located within the geographic limits of a proclaimed emergency, as specified.

Specifically, **this bill**:

1) Defines "mortgage servicer" to have the same meaning as provided by subdivision (a) of Section 2920.5 of the Civil Code.

2) Defines "property" to mean residential real property that is improved by four or fewer residential dwelling units, affixed mobilehomes, and manufactures homes.

3) Defines "state of emergency" and "local emergency" to have the same meanings as defined in subdivisions (b) and (c), respectively, of Section 8558 of the Government Code.

4) Requires a transferor mortgage servicer servicing a mortgage secured by property within the geographic limits of a proclaimed state of emergency or local emergency to deliver to a transferee mortgage servicer any material written records between the borrower and the mortgage servicer relating to the repair of property that suffered a total loss due to damage caused by a natural disaster for which the state of emergency or local emergency was proclaimed.

5) Prohibits a transferee mortgage servicer from dishonoring a previous written agreement to repair property made prior to the transfer between the transferor mortgage servicer and the borrower and approved by the owner of the promissory note.

EXISTING LAW:

1) Defines "mortgage servicer" means a person or entity who directly services a loan, or who is responsible for interacting with the borrower, managing the loan account on a daily basis including collecting and crediting periodic loan payments, managing any escrow account, or enforcing the note and security instrument, either as the current owner of the promissory note or as the current owner's authorized agent (Civil Code Sec. 29205.5)

2) Requires that any person transferring the service of indebtedness on a loan, as specified, to a different servicing agent shall provide to the new agent all existing insurance policy information that the person is responsible for maintaining, including but not limited to flood and hazard insurance policy information. (Civil Code Section 2937)

FISCAL EFFECT: None. This bill is keyed Nonfiscal by Legislative Counsel.

COMMENTS:

1) Purpose.

According to the author:

> Disaster survivors that hold an active mortgage at the time of the disaster and experience a total loss of their home or property enter into rebuild contracts with their mortgage servicer in order to begin the rebuild process. However, if a mortgage servicer sells the mortgage to another mortgage servicing company, the subsequent mortgage servicer may not be aware of any existing rebuild contracts or may have a different interpretation of what requirements the survivor must meet prior to releasing insurance rebuild funds.
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> By requiring that mortgage servicers must disclose any rebuild contracts or agreements to other mortgage servicers, and that those mortgage servicers are required to abide by those contracts and agreements, the rebuild process for these wildfire survivors will not be slowed down as a result of mortgage transfers. Ensuring that the terms of rebuild contracts are consistent between mortgage servicers will simplify and expedite the process for borrowers to receive their insurance funds to repair, rebuild, or replace their homes after experiencing a total loss of their property. Disaster survivors already face tremendous challenges to recover from the effects of the disaster and SB 455 will aid them to begin to rebuild their homes and their lives.

2) Wildfires and the process to rebuild

In recent years, California has faced an alarming increase in destructive wildfires. Most of the largest and devastating fires have taken place within the last decade, culminating in a particularly severe outbreak in recent years. This period has witnessed some of the worst wildfires in the state's recorded history.

For example, the 2017 Tubbs Fire, at the time the most destructive wildfire in California history, killed 22 people, and 5,000 homes burned down. The 2018 wildfire season included the Camp Fire in Butte County, which became the single most destructive wildfire in state history with nearly 19,000 structures destroyed and 85 fatalities, including the near-total destruction of the town of Paradise.

The fires in California and across the United States have enacted a significant economic and financial toll. According to one estimate, wildfires in the United States led to $16.8 billion in damages per year between 2017 and 2021, compared to $1.2 billion in damages per year during the 37 years prior.

Families seeking to rebuild their homes face significant obstacles in doing so, including rising supply costs, delays, and red tape. Families with insurance settlements can choose how to proceed, typically deciding between rebuilding their home, reducing their mortgage balance, or purchasing a new home altogether. According to the Senate Insurance

Committee, insurers offer different types of "open" policies that determine the value of a claim at the time of the loss, with different policies offering different levels of benefits. For example, "actual cash value" policies provide for the cost to repair or replace the home, minus depreciation, and typically cap the coverage based on the estimated normal cost of replacement. Generally speaking, most policies, no matter their overall structure, will pay to build a new home after a total loss without regard to the condition of the original home, though basic insurance coverage might not provide the new costs of complying with more recent building codes.

The Legislature has passed a number of new laws designed to protect survivors during the insurance process. For example, SB 872 (Dodd), Chapter 261, Statutes of 2020, enacted a number of new protections for wildfire survivors, including prohibiting an insurance company from deducting the land value when paying an insurance claim if a wildlife survivor chooses to relocate rather than rebuild their home at the same location.[1]

3) <u>Mortgage servicers</u>

Generally speaking, a mortgage servicer handles the day-to-day task of managing a mortgage loan. The servicer processes loan payments, responds to borrower questions, and keeps track of principal and interest paid. In many cases, the mortgage servicer is not the lender and is servicing the loan on behalf of the lender or investor.

It is also common for a servicer to change over the life of a mortgage. If the mortgage servicer changes, the original and new servicers must provide notices to the borrower, often referred to as hello/goodbye letters. When certain information is transferred from one servicer to another, the required notification must include information such as the contact information for both the old and new servicers and the date on which the old servicer will stop accepting payments and the new server will begin accepting payments.

Mortgage servicers also work with homeowners affected by natural disasters and monitor and control the disbursement of insurance proceeds. For those servicers that follow Fannie Mae's guidelines, then the servicer typically obtains details on the property damage and the necessary repairs, discusses the plans for repair with the borrower, issues a check for any amounts designated for personal property or living expenses, and then disburse the insurance loss proceeds according to a set procedure. Following this, servicers will typically review and approve the final plans for repair and monitor and inspect repairs as they are completed.[2]

4) <u>What is the problem?</u>

Mortgage servicers are an essential part of the process of rebuilding a home, but their role can introduce complications, frustration, and delay. Some of this delay is inevitable given the involvement and different interests of the mortgage lender, the homeowner, and the insurance

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[1] Other bills include: SB 894 (Dodd), Chapter 618, Statutes of 2018, which requires an insurer to renew a policy for at least two annual renewal periods following a total loss in a declared disaster area, and AB 1772 (Aguiar-Curry), Chapter 627, Statutes of 2018, which extended the time to rebuild or replaced after a total loss.
[2] https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-B-Escrow-Taxes-Assessments-and-Insurance/Chapter-B-5-Property-and-Flood-Insurance-Loss-Events/B-5-01-Insured-Loss-Events/1040963581/B-5-01-Insured-Loss-Events-07-14-2021.htm

company. However, the author's office points to a number of ways the process of transferring a mortgage from one servicer to another has interfered with rebuild projects, to the detriment of the homeowner:

- Some new mortgage companies have added additional terms to existing rebuild agreements such as requiring more inspections, significantly delaying the rebuild for months, even when the previous company had agreed to terms.

- An underinsured homeowner and their original mortgage company signed off on the rebuild of a smaller house, but the new mortgage company wouldn't honor the agreement. The new company refused to release all of the remaining funds because the rebuild was different from the lost home.

5) Support

LegalAid of Sonoma County writes in support, arguing:

> Ensuring that the terms of rebuild and replacement contracts are consistent between mortgage servicers and providers will simplify and expedite the process and allow survivors to receive the insurance fund they are entitled to in a timely manner, allowing survivors to repair, rebuild, or replace their homes more efficiently and cost effectively. [We are] very aware of the struggles that disaster survivors face. SB 455 will go a long way towards helping survivors rebuild or replace their homes and focus on recover.

6) Amendments

SB 455 was substantially amended on the Senate Floor to address implementation challenges for those in the mortgage and banking industries. Following those amendments, stakeholders communicated two remaining implementation concerns:

- *No definition of "total loss."* As noted above, insurers have a number of ways to calculate or determine the parameters of an insured loss. Because there is no statutory definition of "total loss" as it relates to property insurance, the California Mortgage Bankers Association and the California Bankers Association submitted feedback that they were unsure of when exactly the bill's requirements would apply.

- *Difficult to keep track of emergency declarations and geographic boundaries.* According to the California Mortgage Bankers Association, it may be difficult for a servicer to keep track of proclaimed emergencies. Given that many servicers operate at a large scale, it may be easier for some to comply with the bill's requirements for any total loss or rebuild scenario.

In response to the above concerns, the committee recommends the following amendments.

- Amend Section 2968 (b) as follows:

  (b) A transferor mortgage servicer servicing a mortgage secured by property within the geographic limits of a proclaimed state of emergency or local emergency shall deliver to a transferee mortgage servicer any material written records between the borrower and the mortgage servicer relating to the ~~repair of property that suffered a total loss due to damage~~ **<u>borrower's election to use insurance funds proceeds to repair or replace property</u>** caused by a ~~natural~~ disaster for which the state of emergency or local emergency was proclaimed.

- Add Section 2968 (d) as follows:

  <u>This article shall not be interpreted to prohibit a mortgage servicer from delivering to a transferee mortgage servicer any material written records relating to a borrower's election to use insurance proceeds to repair or replace damaged property that was not caused by a disaster for which a state of emergency or local emergency was proclaimed.</u>

REGISTERED SUPPORT / OPPOSITION:

Support

Legal Aid of Sonoma County

Opposition

None on file.

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