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Governor Brown Signs Homeowner Bill of Rights

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The California "Homeowner Bill of Rights" prohibits abusive practices in connection with foreclosures on owner-occupied residential real property.

On July 11, 2012, California Governor Jerry Brown signed into law SB 900 —commonly known as the "Homeowner Bill of Rights."[1] The new law prohibits several practices characterized by the Governor's office as abusive to homeowners in connection with foreclosures on owner-occupied residential real property. For example, the new law prohibits "robo-signing" by requiring servicers to ensure accuracy of foreclosure documents before they are recorded. It also prohibits "dual tracking" by requiring that foreclosure efforts be stayed while a borrower pursues a loan modification and further requires that a servicer establish a single point of contact to facilitate negotiations with the borrower. Significantly, the Homeowner Bill of Rights provides a private right of action allowing for injunctive relief, money damages (including punitive damages) and attorney's fees and costs, and provides civil enforcement penalties for violation of the anti-robo-signing provisions. The law takes effect January 1, 2013.

New Foreclosure Requirements: The new law makes several important changes to the mechanics of the foreclosure process. First, SB 900 provides that only "the holder of the beneficial interest" in the deed of trust, or the holder's agent, may initiate foreclosure proceedings by recording a notice of default.[2] It is not clear what effect this provision will have on previous judicial rulings dismissing claims for wrongful foreclosure where necessary assignments were executed before the foreclosure sale.[3]

Second, the law purports to prohibit the practice of "robo-signing" by requiring the servicer to "ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose" before recording any document or filing any affidavit in connection with a foreclosure proceeding.[4] The law does not specify what practices the servicer must follow to ensure accuracy of filings, nor does it require any affidavit or other evidence attesting to the accuracy of recorded or filed documents to be kept. A servicer that engages in "multiple and repeated uncorrected violations" of this provision is subject to civil enforcement penalties of up to $7,500 per loan.[5]

Third, the law prohibits the practice of "dual tracking," whereby a servicer proceeds with a foreclosure while a borrower pursues a loan modification. Under SB 900, if a borrower submits a complete application for a first lien loan modification, the beneficiary may not record a Notice of Default or Notice of Sale, and may not conduct a Trustee's Sale while the application is pending.[6] If the modification is ultimately denied, the borrower is entitled to appeal the decision to the servicer within 30 days.[7] The beneficiary may not proceed with the foreclosure until the exhaustion of the appeals process, or 31 days after written notification on the denial, whichever occurs later.[8]

Finally, SB 900 imposes a number of new regulations on modification negotiations. Under the new law, a servicer must establish a single point of contact for foreclosure prevention alternatives for the duration of the negotiation with the borrower, and must provide the borrower with one or more direct means of communication with that contact.[9] And a servicer may not assess late fees while a loan modification application or related appeal is pending, or while the borrower is making timely payments under a trial plan.[10] Finally, if a loan is transferred while an application is pending, the new servicer must honor any previously approved applications.[11]

Borrower Remedies: In addition to the civil penalties described above, SB 900 creates a private right of action for any "material violation" of the new law. The law provides for injunctive relief at any time before the Trustee's Deed is recorded, and for actual damages at any time thereafter.[12] Notably, a court may award the greater of treble actual damages or $50,000 for an intentional, reckless, or willful violation.[13] Additionally, a prevailing borrower in an action for money damages or for injunctive relief may be awarded reasonable attorney's fees and costs.[14]

Importantly, any party to the multistate Attorney General Settlement in *United States of America et al. v. Bank of America Corporation* is excluded from liability under any the provisions described above while the consent judgment is in effect, so long as the servicer is in compliance with the consent judgment with respect to the borrower who brought the action.[15]

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[1] The text of S.B. 900 is available **here.**
[2] Cal. Civ. Code § 2924(a)(6).
[3] *Compare, e.g., Ferguson v. Avelo Mortg., LLC*, 126 Cal. Rptr. 3d. 586, 594-95 (2011) (dismissing wrongful foreclosure claim where assignment post-dated notice of default but pre-dated notice of sale); *Robinson v. OneWest Bank, FSB*, 2011 WL 3525607 (Cal. App. Aug. 11, 2011) (citing *Ferguson*).
[4] Cal. Civ. Code § 2924.17(b).
[5] *Id.* at § 2924.17(c).
[6] *Id.* at § 2923.6(c).
[7] *Id.* at § 2923.6(d)
[8] *Id.* at § 2923.6(e).
[9] *Id.* at § 2923.7. The single point of contact's responsibilities are enumerated in section 2923.7(b).
[10] *Id.* at § 2924.11(f).
[11] *Id.* at § 2924.11(g).
[12] *Id.* at § 2924.12(a)-(b).
[13] *Id.* at § 2924.12(b).
[14] *Id.* at § 2924.12(i).
[15] *Id.* at § 2924.12(g).

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