



## California Homeowners' Bill of Rights (HOBR)

Paul Leonard: (510) 379-5510

November 2012

The California Foreclosure Reduction Act – **SB 900** (Leno, Corbett, DeSaulnier, Evans, Pavley, Steinberg) & **AB 278** (Eng, Feuer, Mitchell) extends key protections of the [National Mortgage Settlement](#) to all mortgage servicers for owner-occupant borrowers at risk of foreclosure.

### Scope of Coverage

- **What Loans?** Limits covered loans to first liens of owner-occupied, one-to-four unit principal residence mortgages.
- **Which Servicers?**
  - **All servicers:** General obligations, including prohibiting dual tracking and prohibition on false documents applies to all servicers.
  - **Small servicers:** Servicers that foreclose on fewer than 175 residential properties in a year are relieved from some of HOBR's procedural requirements, as well as from the point of contact requirement.

### Restricts Dual Tracking

- **Restrictions on Beginning the Foreclosure Process:** Ensures that borrowers who submit a complete loan modification application to their servicer will get a "yes or no" decision from their servicer with an explanation, before the servicer begins the foreclosure process (*i.e.*, by recording a Notice of Default (NoD).) The AG Settlement provides similar restrictions for a borrower who submits a complete application within 120 days of delinquency; HOBR does not have such a time limit. Similarly, if the servicer has approved a foreclosure prevention alternative (e.g., short sale, repayment plan) in writing, the servicer may not record a NoD.
- **Notice About Foreclosure Alternatives After NoD:** Requires servicers to notify borrowers who do not submit an application before the NoD is recorded about their options for applying for a foreclosure alternative. (This does not apply to small servicers that completed fewer than 175 foreclosures in the prior reporting period.)
- **Restrictions on Continuing the Foreclosure Process Once Started:** Provides that if a borrower submits a complete loan modification application after an NoD has been recorded, the servicer may not record a notice of trustee sale (NTS) or conduct a sale until after a decision on that application is provided to the borrower, and time to appeal the decision has passed. Similarly, if the servicer has approved a foreclosure prevention alternative (e.g., short sale, repayment plan) in writing after recording an NoD, the servicer shall not then record an NTS, or conduct a trustee sale.

### Prohibits Robo-Signing (Requires Proper and Accurate Foreclosure Documentation)

- **Accurate Documents:** Provides that all foreclosure documents either recorded with the county recorder (e.g., Notice of Default), or filed in a foreclosure-related court proceeding must be accurate, complete and supported by evidence.
- **Servicer Review:** Requires servicers to review reliable evidence to substantiate the borrowers' default and their right to foreclose.
- **Civil Penalties:** Any servicer that engages in "multiple and repeated uncorrected violations" is liable for a civil penalty of up to \$7,500 per mortgage/deed of trust in an action undertaken by the Attorney General or local prosecutor, or by the servicer's regulator (sunsets Jan. 1, 2018).



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### **Requires Servicers to Provide an Accountable Point of Contact**

- Upon request from a borrower who requests a foreclosure prevention alternative, a servicer must provide a “single” point of contact for the borrower to communicate with. The servicer may provide a team of personnel for this purpose.
- The individual or team point of contact must each have knowledge of the borrower’s status and loss prevention alternatives, the responsibility to coordinate the flow of documentation, access to decision makers, and the ability to stop the foreclosure process when necessary.

### **Miscellaneous Notice and Information Provisions**

- **New Notice of Trustee Sale.** Requires servicers to send a new written notice when a trustee sale date is changed by 10 business days or more.
- **Servicemembers Civil Relief Act.** Servicer must send to borrowers in default information regarding the Servicemembers Civil Relief Act (before recording an NoD).
- **Notice to Borrowers.** Servicer must send a notice to borrowers in default (before recording an NoD), informing them that they can request: (1) copy of promissory note or other evidence of indebtedness; (2) copy of deed of trust or mortgage; (3) copy of any assignment to demonstrate right to foreclose; and (4) copy of payment history.

### **Provides Strong but Fair Accountability/Borrower Remedies**

- **Stopping the Foreclosure Process.** If a servicer records a notice of default after a *material violation* of the law, a borrower can file a lawsuit to seek an “injunction” that would require the servicer to stop a foreclosure sale until the violation has been corrected and remedied.
- **Damages.** For actions brought after a foreclosure sale has occurred, judges may award actual damages, plus attorney fees if there was a *material violation* of the law.
- **Willful Misconduct.** A court may award the greater of triple actual damages or \$50,000 if it finds that the servicer’s violation was intentional, reckless or resulted from willful misconduct.
- **Right to Cure.** A mortgage servicer can avoid liability by correcting and remedying a violation at any time before a “trustee’s deed upon sale” has been recorded (the document recorded following a foreclosure sale of the property).
- **Attorney Fees.** A court may award attorneys’ fees to borrowers only for successful actions.

### **Sunset**

#### **The following provisions sunset on January 1, 2018:**

- *Government enforcement provisions.* The authority of regulators or other government entities to enforce violations of the dual tracking or robo-signing provisions. Borrowers can still bring litigation to enforce material violations.
- *Procedural details regarding dual track provisions.* Details such as requirements for acknowledging a complete application, the required appeal period, fee prohibitions and specific requirements for denial letters will sunset. The general prohibitions against dual tracking will remain in effect, and do not sunset.
- *Post-NoD Notice regarding availability of foreclosure alternatives.*
- *Notice stating new trustee sale date*



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- *Notice regarding Servicemembers Civil Relief Act.*
- *Notice to Borrowers regarding documents or information they can request from servicer.*