

Final Homeowner Bill of Rights Reflects Extensive Compromise

During the course of negotiations, the Joint Conference Committee on Mortgage Foreclosures has substantially narrowed the scope of the bill and limited the protections to borrowers relative to the version of the bills that were before the Assembly and Senate Banking Committees earlier this year. Specific changes include:

- **Narrower Scope of Coverage:** the final bill includes a number of changes which narrow the loans and servicers that are covered by the bill, including
 - Limits covered loans to first liens of owner-occupied, one-to-four unit principal residence mortgages. Previously, coverage included all residential mortgage loans.
 - Limits application of procedural requirements and single point of contact requirements to only servicers with more than 175 foreclosures per year. General obligations, including prohibiting dual tracking and prohibition on false documents will still apply to all servicers.
- **Elimination of Chain of Title Requirements:** Earlier versions of the bills required lenders/servicer to record all assignments and to make available evidence of all assignments as part of a comprehensive chain of title requirement for the right to foreclose. These provisions were deleted. The bill now requires evidence of and an offer to make available to the borrower the *last* assignment.
- **Addition of a Comprehensive Right to Cure:** Prior versions of the bill omitted requirements for servicers to have a right to cure violations in lieu of legal liability. The final version includes an express and comprehensive right to cure that extends until the notice of trustee sale is filed. A mortgage servicer can avoid liability by curing a violation before a foreclosure sale.
- **Elimination of Statutory Damages:** Originally the bill provided post-sale minimum statutory damages of the greater of actual damages or \$10,000. The final version eliminated any minimum statutory damage award, so that borrowers may only receive actual damages. Treble actual or a minimum of \$50,000 damages would continue to apply only for intentional, reckless violations or willful misconduct.
- **Single Point of Contact Requirements Are Weakened:** Rather than requiring a single person as in the National Mortgage Settlement, the final bill allows servicer to identify the point of contact to include multiple individuals, each of whom have knowledge of the borrower's status and loss prevention alternatives, access to decision makers, and the responsibility to coordinate the flow of documentation between borrower and mortgage servicer.
- **5 Year Sunset:** The enforcement provisions for Dual Tracking and Document Verification violations sunset after 5 years. A general prohibition against Dual Tracking and "Robo-signing" will remain in effect.

These compromises reflect months of hard work and negotiations on the part of the Conference Committee Members, the Sponsor, Authors, and Industry Representatives and Consumer Advocates. **Despite the many compromises, the bill makes critical advances in providing core protections for borrowers with a robust enforcement regime.**