

## California Legislators Should Support the Homeowner Bill of Rights

**California is only halfway through the foreclosure crisis, with more than 670,000 California households at risk of foreclosure:** Data from CRL's report, *Lost Ground, 2011*<sup>1</sup> show that 9.3 percent of all loans originated between 2004 and 2008 – 581,000 – have already resulted in completed foreclosure, but that another 8.9 percent (549,000) were at immediate risk of foreclosure. At the end of 4Q 2011, more than 454,000 mortgage loans – or more than 1 in 14 – were past due (but not yet in foreclosure), while almost 217,000 loans were in the foreclosure process, bringing the total California loans at risk to approximately 671,000.<sup>2</sup>

### What The Bill Act Will Do

The California Foreclosure Reduction Act – **AB 278** (Eng, Feuer, Mitchell) & **SB 900** (Leno, Corbett, DeSaulnier, Evans, Pavley, Steinberg) extends<sup>3</sup> key protections of the National Mortgage Settlement to all residential mortgage servicers for all owner-occupant borrowers at risk of foreclosure.

- **Restrict Dual Tracking:** Under current law, borrowers can be processed for loan modifications and foreclosures simultaneously, resulting in many borrowers who are negotiating for a loan modification wrongfully losing their homes. Like the AG Settlement, this bill will ensure that borrowers who submit a completed loan modification application will get a “yes or no” decision from their servicer, with an explanation, before they commence the foreclosure process (i.e. file a Notice of Default(NOD).)

In addition, the bill requires servicers to notify borrowers who do not submit an application before the NOD is filed, that they may apply for a modification after the NOD is recorded, and prohibits servicers from recording a notice of sale (NOS) until after a decision on that application is provided to the borrower.

- **Require Proper and Accurate Foreclosure Documentation:** Requires servicers to review reliable evidence to substantiate the borrowers' default and their right to foreclose. In addition, all recorded foreclosure documents must be properly reviewed and verified for accuracy.
- **Give Borrowers an Accountable Point of Contact:** Requires servicers to give borrowers who are potentially eligible for a loan modification an accountable point of contact that will provide clear, accurate information to borrowers and coordinate all documents associated with loan modifications.
- **Provide Strong but Fair Accountability:** To ensure that servicers have strong incentives to comply with these provisions, the bill provides that borrowers may bring legal actions to courts, but only for material violations of the law. Prior to a foreclosure sale, servicers will be given the option to cure a violation in lieu of paying damages. Borrowers may file actions only after a notice of default is recorded. Judges can provide only injunctive relief, requiring a servicer to stop the foreclosure sale and correct any previous violation. For actions brought after a foreclosure sale has occurred, judges may award actual damages, plus attorney fees. A court may award the greater treble actual damages or \$50,000 if it finds that the servicer's violation was intentional, reckless or resulted from willful misconduct.

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<sup>1</sup> <http://www.responsiblelending.org/mortgage-lending/research-analysis/lost-ground-2011.html>

<sup>2</sup> 4Q 2011 MBA National Delinquency Survey, scaled up to take into account that the Survey does not include 100% coverage of the mortgage market.

<sup>3</sup> Some specific procedural dual tracking provisions will sunset after five years, but the obligations to prevent dual tracking are permanent.

## What the Bill Will NOT Do

Industry opponents offer a familiar litany of empty arguments against the bill:

**This bill will NOT Open the Door to A Flood of Frivolous Lawsuits:** Borrowers are looking desperately for servicers to provide fair and timely consideration for alternatives to foreclosures that save their homes, not to file lawsuits. But servicers have repeatedly shown – in the HAMP program, among others – that they do not follow servicing rules in the absence of a meaningful enforcement mechanism. The right to file an injunction to stop a foreclosure sale is not a legal device used for delay; rather, it's the last hope for borrowers who have not been given the legally required consideration by their servicers to save their homes. ***Doesn't a family who loses their home because their servicer broke the law deserve their day in court?***

**This bill will NOT Lengthen the Foreclosure Process / Create a *De facto* Moratorium:** These reforms will *standardize the loss mitigation process for all servicers and should speed up the processing of foreclosures for those borrowers without options to avoid foreclosures.* The HAMP Program, GSE Servicing Standards (used by Fannie Mae and Freddie Mac) and the AG Settlement have all adopted similar Dual Tracking restrictions as those required by this bill. If anything, these reforms should expedite the foreclosure process by requiring loan modification decisions before the Notice of Default is filed, allowing for faster processing of borrowers after a NOD is filed. The timing and processing of foreclosures will remain squarely in the control of servicers who are efficiently complying with the law in reviewing loan modification applications.

**This bill will NOT Allow Strategic Defaulters to Game the Process:** Combined with earlier legislation, this bill *allows servicers to more quickly weed out strategic defaulters* by providing deadlines for applying for a loan modification (in order to get the benefit of any dual track restrictions). Borrowers who have too much income to qualify for a modification could be quickly rejected. The servicer will have the right to issue a speedy denial, and will be required only to send the homeowner a letter detailing the reason for denial before proceeding with foreclosure.

Any applications submitted post-NoD does not stop the foreclosure clock from ticking and any delay in the ability to proceed to foreclosure would be due to the servicer's delay in making a determination.

**This bill will NOT Impose Unreasonable Burdens on Any Servicers:** The key dual tracking provisions adhere to the servicing rules used by HAMP, Fannie Mae and Freddie Mac and the AG Settlement. Together, they cover more than 80 percent of all mortgages serviced in California. All servicers should ensure that borrowers get fair consideration for alternatives to foreclosure, record accurate foreclosure documents and provide good customer service. Borrowers have no power to change servicers, and should be assured that any servicer is following fair laws before taking their homes.

## Conclusion

All California homeowners deserve fair and honest treatment in the foreclosure process, and a fair opportunity to save their homes when an alternative to foreclosure is possible. The Foreclosure Reduction Act would put in place measures to promote transparency and fairness in the foreclosure and loan modification process for all California mortgage servicers.