

The 2012 Foreclosure Reduction Act: CRL Refutes Flawed Claims from California Bankers

CRL Policy Brief

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The *Foreclosure Reduction Act* (AB 278 & SB 900) is designed to provide Californians with better safeguards and fair treatment in the foreclosure process. The California Bankers Association and other industry groups recently released a flawed report purporting to show how the bill will extend the foreclosure process and have detrimental economic consequences. The proponents' claims are unsubstantiated and are a deceptive attempt to derail carefully-crafted protective measures for California homeowners.

The industry's report, "Foreclosure Reform in California: An Economic Analysis," is based on the asserted, but totally unsubstantiated, claim that the bill will cause delays in the foreclosure process, thus making it harder for the housing market to recover. *The report shows no empirical evidence of how the bill's provisions will extend the foreclosure timeline in California.* To the contrary, the bill will establish mechanisms to help borrowers avoid unnecessary foreclosures—the real key to restoring the housing market—and prevent frivolous delay. Requiring timely decisions on loan modifications before the foreclosure process begins means that legitimate foreclosures should be able to proceed quickly, unimpeded by challenges from borrowers who have been informed that they do not qualify for alternatives to foreclosure.

The 2012 Foreclosure Reduction Act will improve the foreclosure process, not hamper it. Specifically:

- **Timelines Remain in Servicer Control:** 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.
- **No Structural Changes:** The bill **does not change** the structure of the non-judicial foreclosure process or dictate to servicers the length of time to process a loan modification application.
- **Early Review Should Accelerate the Foreclosure Process:** These reforms will **speed up** the processing of foreclosures for those borrowers without options to avoid foreclosure while also standardizing the loss mitigation process for servicers.
- **Builds on Existing Servicing Standards:** The HAMP Program, GSE Servicing Standards (used by Fannie Mae and Freddie Mac) and the AG Settlement have all adopted similar dual tracking restrictions to those required by this bill. If anything, these reforms **should expedite the foreclosure process** by requiring loan modification decisions before the Notice of Default (NOD) is filed, allowing for faster processing of borrowers after a NOD is filed.

The bill will limit foreclosure-related litigation by clarifying who may bring actions, and for what types of relief. Specifically, the bill:

- **Narrows Current Law on Private Actions:** Some in the industry have argued that borrowers may already have a right to bring private actions, as a result of court-based precedents. This bill will help clarify and limit the types of actions that can be brought, and clarifies and limits the types of relief that can be offered. For example, only injunctive relief can be provided prior to a foreclosure sale, and post-sale statutory damages are limited to actual economic damages. Only willful and reckless conduct by the servicers is subject to statutory damage awards.
- **Limits Claims to Material Violations:** Borrowers may only bring actions for material violations, and attorney fees can only be awarded – at the court's discretion – for prevailing plaintiffs. Attorneys will be unlikely to bring actions unless they believe the violation meets the materiality standard and has a reasonable likelihood of success.
- **Adds Broad Right to Cure:** The bill has added a broad right to cure, allowing servicers to avoid liability by correcting violations up to the point of recording a deed of sale.
- **Protections Will Limit Actions:** The bill offers mechanisms to **REDUCE** litigation by requiring a single point of contact, implementing dual track restrictions, and providing servicers with a right to cure. These measures are designed to ensure adequate communication between parties and to **avoid unnecessary litigation**.