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SB-1150 Mortgages and deeds of trust: mortgage servicers: successors in interest. (2015-2016)

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Senate Bill No. 1150

CHAPTER 838

An act to add Section 2920.7 to the Civil Code, relating to mortgages and deeds of trust.

[Approved by Governor September 29, 2016. Filed with Secretary of State September 29, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1150, Leno. Mortgages and deeds of trust: mortgage servicers: successors in interest.

Existing law imposes various requirements to be satisfied prior to exercising a power of sale under a mortgage or deed of trust. Existing law gives a borrower, as defined, various rights and remedies against a mortgage servicer, mortgagee, trustee, beneficiary, and authorized agent in regards to foreclosure prevention alternatives, as defined, including loan modifications, which is commonly referred to as being part of the California Homeowner Bill of Rights. Existing law defines a mortgage servicer as a person or entity who directly services a loan, or is responsible for interacting with the borrower, and managing the loan account on a daily basis, as specified.

This bill until January 1, 2020, would prohibit a mortgage servicer, upon notification that a borrower has died, from recording a notice of default until the mortgage servicer does certain things, including requesting reasonable documentation of the death of the borrower from a claimant, who is someone claiming to be a successor in interest, who is not a party to the loan or promissory note and providing a reasonable period of time for the claimant to present the requested documentation. The bill would deem a claimant a successor in interest, as defined, upon receipt by a mortgage servicer of the reasonable documentation regarding the status of the claimant as a successor in interest and the claimant's ownership interest in the real property.

The bill would require a mortgage servicer, within 10 days of a claimant being deemed a successor in interest, to provide the successor in interest with information about the loan, as specified. The bill would require a mortgage servicer to allow a successor in interest to assume the deceased borrower's loan or to apply for foreclosure prevention alternatives on an assumable loan, as specified. The bill would authorize a mortgage servicer, when there are multiple successors in interest who do not wish to proceed as coborrowers or coapplicants, to require any nonapplicant successor in interest to consent in writing to the application for a loan assumption. The bill would provide that a successor in interest, as specified, who assumes an assumable loan and wishes to apply for a foreclosure prevention alternative has the same rights and remedies as a borrower under specified provisions of the California Homeowner Bill of Rights. The bill would authorize a successor in interest to bring an action for injunctive relief to enjoin a material violation of specified provisions of law and would authorize a court to award a prevailing successor in interest reasonable attorney's fees and costs for the action. The bill would define terms for these purposes and make various findings and declarations. The bill would deem a mortgage servicer, mortgagee, or beneficiary of the deed of trust, or an agent thereof, to be in compliance with the above-described provisions if they comply with specified federal laws. The bill would exempt certain depository institutions and persons from these provisions, as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby declares all of the following:

(a) Beginning in 2008, California faced a foreclosure crisis, with rapidly dropping home values and skyrocketing job losses. Indiscriminate foreclosure practices of major mortgage servicers compounded the problem as they created a labyrinth of red tape, lost documents, and erroneous information, and then they started foreclosure proceedings while borrowers and their families were in the middle of applying for a loan modification.

(b) The California Legislature responded with a first-in-the-nation Homeowner Bill of Rights (HBOR), which requires mortgage servicers to provide borrowers a fair and transparent process, a single point of contact, and the opportunity to finish applying for a loan modification before foreclosure proceedings can start. HBOR stabilized families, neighborhoods, and local communities by slowing down indiscriminate foreclosures.

(c) Now, however, district attorneys and legal aid organizations are reporting an increasing number of cases in which mortgage servicers use a loophole in HBOR to foreclose on certain homeowners—people who survive the death of a borrower and have an ownership interest in the home but are not named on the mortgage loan. Most often, the “survivor” is the borrower’s spouse and is over 65 years of age.

(d) When the surviving widow or widower, domestic partner, children, or other heirs attempt to obtain basic information about the loan from the servicer, they face the same kind of barriers and abuses—and, finally foreclosure—that convinced the Legislature to pass HBOR.

(e) Home ownership is the primary avenue for most Americans to build generational wealth. Indiscriminate foreclosures on surviving heirs destroy a family’s ability to build for its financial future. Foreclosures also exacerbate the racial wealth gap—and overall wealth inequality—in society, and force seniors who want to “age in place” into the overheated rental market instead, with devastating health impacts.

(f) Surviving heirs deserve the same transparency and opportunity to save their home as HBOR gave the original borrower. This act would stem a disturbing nationwide trend and help keep widows and widowers, children, and other survivors in their homes—without requiring mortgage servicers to do anything more than they already do for other homeowners.

(g) It is the intent of the Legislature that this act work in conjunction with federal Consumer Financial Protection Bureau servicing guidelines.

SEC. 2. Section 2920.7 is added to the Civil Code, to read:

2920.7. (a) Upon notification by someone claiming to be a successor in interest that a borrower has died, and where that claimant is not a party to the loan or promissory note, a mortgage servicer shall not record a notice of default pursuant to Section 2924 until the mortgage servicer does both of the following:

(1) Requests reasonable documentation of the death of the borrower from the claimant, including, but not limited to, a death certificate or other written evidence of the death of the borrower. A reasonable period of time shall be provided for the claimant to present this documentation, but no less than 30 days from the date of a written request by the mortgage servicer.

(2) Requests reasonable documentation from the claimant demonstrating the ownership interest of that claimant in the real property. A reasonable period of time shall be provided for the claimant to present this documentation, but no less than 90 days from the date of a written request by the mortgage servicer.

(b) (1) Upon receipt by the mortgage servicer of the reasonable documentation of the status of a claimant as successor in interest and that claimant’s ownership interest in the real property, that claimant shall be deemed a “successor in interest.”

(2) There may be more than one successor in interest. A mortgage servicer shall apply the provisions of this section to multiple successors in interest in accordance with the terms of the loan and federal and state laws and regulations. When there are multiple successors in interest who do not wish to proceed as coborrowers or coapplicants, a mortgage servicer may require any nonapplicant successor in interest to consent in writing to the application for loan assumption.

(3) Being a successor in interest under this section does not impose an affirmative duty on a mortgage servicer or alter any obligation the mortgage servicer has to provide a loan modification to the successor in interest. If a successor in interest assumes the loan, he or she may be required to otherwise qualify for available foreclosure prevention alternatives offered by the mortgage servicer.

(c) Within 10 days of a claimant being deemed a successor in interest pursuant to subdivision (b), a mortgage servicer shall provide the successor in interest with information in writing about the loan. This information shall include, at a minimum, loan

balance, interest rate and interest reset dates and amounts, balloon payments if any, prepayment penalties if any, default or delinquency status, the monthly payment amount, and payoff amounts.

(d) A mortgage servicer shall allow a successor in interest to either:

(1) Apply to assume the deceased borrower's loan. The mortgage servicer may evaluate the creditworthiness of the successor in interest, subject to applicable investor requirements and guidelines.

(2) If a successor in interest of an assumable loan also seeks a foreclosure prevention alternative, simultaneously apply to assume the loan and for a foreclosure prevention alternative that may be offered by, or available through, the mortgage loan servicer. If the successor in interest qualifies for the foreclosure prevention alternative, assume the loan. The mortgage servicer may evaluate the creditworthiness of the successor in interest subject to applicable investor requirements and guidelines.

(e) (1) A successor in interest shall have all the same rights and remedies as a borrower under subdivision (a) of Section 2923.4 and under Sections 2923.6, 2923.7, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.15, 2924.17, 2924.18, and 2924.19. For the purposes of Section 2924.15, "owner-occupied" means that the property was the principal residence of the deceased borrower and is security for a loan made for personal, family, or household purposes.

(2) If a trustee's deed upon sale has not been recorded, a successor in interest may bring an action for injunctive relief to enjoin a material violation of subdivision (a), (b), (c), or (d). Any injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(3) After a trustee's deed upon sale has been recorded, a mortgage servicer shall be liable to a successor in interest for actual economic damages pursuant to Section 3281 resulting from a material violation of subdivision (a), (b), (c), or (d) by that mortgage servicer if the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, the court may award the successor in interest the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(4) A court may award a prevailing successor in interest reasonable attorney's fees and costs in an action brought pursuant to this section. A successor in interest shall be deemed to have prevailed for purposes of this subdivision if the successor in interest obtained injunctive relief or damages pursuant to this section.

(5) A mortgage servicer shall not be liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(f) Consistent with their general regulatory authority, and notwithstanding subdivisions (b) and (c) of Section 2924.18, the Department of Business Oversight and the Bureau of Real Estate may adopt regulations applicable to any entity or person under their respective jurisdictions that are necessary to carry out the purposes of this section.

(g) The rights and remedies provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. This section shall not be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(h) Except as otherwise provided, this act does not affect the obligations arising from a mortgage or deed of trust.

(i) For purposes of this section, all of the following definitions shall apply:

(1) "Notification of the death of the mortgagor or trustor" means provision to the mortgage servicer of a death certificate or, if a death certificate is not available, of other written evidence of the death of the mortgagor or trustor deemed sufficient by the mortgage servicer.

(2) "Mortgage servicer" shall have the same meaning as provided in Section 2920.5.

(3) "Reasonable documentation" means copies of the following documents, as may be applicable, or, if the relevant documentation listed is not available, other written evidence of the person's status as successor in interest to the real property that secures the mortgage or deed of trust deemed sufficient by the mortgage servicer:

(A) In the case of a personal representative, letters as defined in Section 52 of the Probate Code.

(B) In the case of devisee or an heir, a copy of the relevant will or trust document.

(C) In the case of a beneficiary of a revocable transfer on death deed, a copy of that deed.

(D) In the case of a surviving joint tenant, an affidavit of death of the joint tenant or a grant deed showing joint tenancy.

(E) In the case of a surviving spouse where the real property was held as community property with right of survivorship, an affidavit of death of the spouse or a deed showing community property with right of survivorship.

(F) In the case of a trustee of a trust, a certification of trust pursuant to Section 18100.5 of the Probate Code.

(G) In the case of a beneficiary of a trust, relevant trust documents related to the beneficiary's interest.

(4) "Successor in interest" means a natural person who provides the mortgage servicer with notification of the death of the mortgagor or trustor and reasonable documentation showing that the person is the spouse, domestic partner, joint tenant as evidenced by grant deed, parent, grandparent, adult child, adult grandchild, or adult sibling of the deceased borrower, who occupied the property as his or her principal residence within the last six continuous months prior to the deceased borrower's death and who currently resides in the property.

(j) This section shall apply to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. "Owner-occupied" means that the property was the principal residence of the deceased borrower.

(k) (1) Any mortgage servicer, mortgagee, or beneficiary of the deed of trust, or an authorized agent thereof, who, with respect to the successor in interest or person claiming to be a successor in interest, complies with the relevant provisions regarding successors in interest of Part 1024 of Title 12 of the Code of Federal Regulations (12 C.F.R. Part 1024), known as Regulation X, and Part 1026 of Title 12 of the Code of Federal Regulations (12 C.F.R. Part 1026), known as Regulation Z, including any revisions to those regulations, shall be deemed to be in compliance with this section.

(2) The provisions of paragraph (1) shall only become operative on the effective date of any revisions to the relevant provisions regarding successors in interest of Part 1024 of Title 12 of the Code of Federal Regulations (12 C.F.R. Part 1024), known as Regulation X, and Part 1026 of Title 12 of the Code of Federal Regulations (12 C.F.R. Part 1026), known as Regulation Z, issued by the federal Consumer Financial Protection Bureau that revise the Final Servicing Rules in 78 Federal Register 10696, of February 14th, 2013.

(l) This section shall not apply to a successor in interest who is engaged in a legal dispute over the property that is security for the borrower's outstanding mortgage loan and has filed a claim raising this dispute in a legal proceeding.

(m) This section shall not apply to a depository institution chartered under state or federal law, a person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code, or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, that, during its immediately preceding annual reporting period, as established with its primary regulator, foreclosed on 175 or fewer residential real properties, containing no more than four dwelling units, that are located in California.

(n) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.