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AB-238 Mortgage forbearance: state of emergency: wildfire. (2025-2026)

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Date Published: 09/22/2025 02:00 PM

Assembly Bill No. 238

CHAPTER 128

An act to add Title 19.1 (commencing with Section 3273.20) to Part 4 of Division 3 of the Civil Code, relating to wildfire relief, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2025. Filed with Secretary of State September 22, 2025.]

LEGISLATIVE COUNSEL'S DIGEST

AB 238, Harabedian. Mortgage forbearance: state of emergency: wildfire.

Existing law requires a mortgage servicer to comply with applicable federal guidance regarding borrower options following a forbearance relating to the COVID-19 emergency.

This bill would authorize a borrower who is experiencing financial hardship that prevents the borrower from making timely payments on a specified residential mortgage loan due directly to the wildfire disaster described in the proclamation of a state of emergency issued by Governor Gavin Newsom on January 7, 2025, or the federally declared disaster, declared on January 8, 2025, related to the Eaton Wildfire, the Palisades Fire, and the Straight-line Winds, to request forbearance on their residential mortgage loan, as prescribed. The bill would limit eligibility for that forbearance to loans that are secured by residential real property improved by 4 or fewer residential units. The bill would require the borrower to affirm that they are experiencing a financial hardship due to the wildfire disaster. Because the bill would expand the crime of perjury, the bill would impose a state-mandated local program.

This bill would, except as specified, require a mortgage servicer to offer mortgage payment forbearance of a period of up to an initial 90 days, which shall be extended at the request of the borrower in 90-day increments, up to a maximum forbearance period of 12 months. The bill would also prohibit a mortgage servicer from assessing any late fees to the borrower's account or charging a default rate of interest during the forbearance period. The bill would provide that the forbearance period includes any period of forbearance related to the wildfire disaster that a mortgage servicer has provided to a borrower before the effective date of these provisions. The bill would require a mortgage servicer to report the credit obligations of borrowers under a disaster-related forbearance plan in compliance with the federal Fair Credit Reporting Act. For accounts granted disaster-related mortgage payment relief, the bill would prohibit mortgage servicers from furnishing information during the forbearance period indicating that the payments are in forbearance and would require them to report the credit obligation or account as current or delinquent, as specified. The bill would prohibit a mortgage servicer from initiating any judicial or nonjudicial foreclosure process, moving for a foreclosure judgment or order of sale, or executing a foreclosure-related eviction or foreclosure during the period of forbearance.

This bill would require the Department of Financial Protection and Innovation to post specified information on its website including links to the provisions of servicing guidelines pertaining to disaster-related forbearance relief for federally backed loans and a dedicated telephone number for borrowers seeking assistance.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. Title 19.1 (commencing with Section 3273.20) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 19.1. Mortgage Forbearance Act

3273.20. This title is known, and may be cited, as the “Mortgage Forbearance Act.”

3273.21. For purposes of this title, the following terms have the following meanings:

(a) (1) “Borrower” means a natural person who is a mortgagor or trustor, or a person who holds a power of attorney for a mortgagor or trustor.

(2) “Borrower” does not include an individual who has surrendered the secured property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.

(3) “Borrower” does not include an individual who has a recorded notice of default recorded against the real property that is secured by the residential mortgage loan before the beginning of the wildfire disaster unless the notice of default was rescinded.

(b) “Federally backed loan” means a residential mortgage loan that is insured, guaranteed, purchased, or secured by a federal agency or government-sponsored entity.

(c) “Disaster-related forbearance relief” means the relief described in servicing guidelines for federally backed loans.

(d) (1) “Mortgage servicer” means a person or entity who directly services a loan or who is responsible for interacting with the borrower, managing the loan account on a daily basis, including collecting and crediting periodic loan payments, managing any escrow account, or enforcing the note and security instrument, either as the current owner of the promissory note or as the current owner’s authorized agent.

(2) “Mortgage servicer” also means a subservicing agent to a master servicer by contract.

(3) “Mortgage servicer” does not include a trustee, or a trustee’s authorized agent, acting under a power of sale pursuant to a deed of trust.

(e) “Residential mortgage loan” means a loan that is secured by residential real property improved by four or fewer residential units.

(f) “Wildfire disaster” means the conditions described in the proclamation of a state of emergency issued by Governor Gavin Newsom on January 7, 2025, or the federally declared disaster, declared on January 8, 2025, related to the Eaton Wildfire, the Palisades Fire, and the Straight-line Winds (DR-4856-CA).

3273.22. This title applies to a depository institution chartered under federal or state law, a person covered by the licensing requirements of 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.

3273.23. (a) A borrower who is experiencing financial hardship that prevents the borrower from making timely payments on a residential mortgage loan due directly to the wildfire disaster may request forbearance on the residential mortgage loan by doing both of the following:

(1) Submitting a request to the borrower’s mortgage loan servicer before the earlier of either of the following:

(A) Six months after the date upon which the state of emergency issued by Governor Gavin Newsom on January 7, 2025, is terminated.

(B) January 7, 2027.

(2) Affirming that the borrower is experiencing a financial hardship due to the wildfire disaster.

(b) Upon a request by a borrower for forbearance under subdivision (a), a mortgage servicer shall offer mortgage payment forbearance for a period of up to an initial 90 days, which shall be extended at the request of the borrower in 90-day increments, up to a maximum forbearance period of 12 months.

(c) The borrower shall be notified within 10 business days by the mortgage servicer whether their request for forbearance has been approved.

(d) If the mortgage servicer, acting under delegated authority to make forbearance determinations on behalf of the investor, denies a forbearance request within the maximum allowable forbearance period of 12 months pursuant to subdivision (b), the mortgage servicer shall not be in violation of this section if the mortgage servicer provides written notice to the borrower stating the specific reason for denial. The notice shall include both of the following:

(1) A clear and concise explanation of the specific investor provision that is the basis for the denial.

(2) The text of the specific investor guideline or contractual provision that is the basis for the denial of the borrower's forbearance request.

(e) If the written notice in subdivision (c) cites any defect in the borrower's request, including an incomplete application or missing information, that is curable, the mortgage servicer shall do all of the following:

(1) Specifically identify any curable defect in the written notice.

(2) Provide 21 calendar days from the mailing date of the written notice for the borrower to cure any identified defect.

(3) Accept the borrower's revised request for forbearance before the 21-day period described in paragraph (2) lapses.

(4) Respond to the borrower's revised request within five business days of receipt of the revised request.

(f) The forbearance period required by subdivision (b) shall include any period of forbearance related to the wildfire disaster that a mortgage servicer has provided to a borrower before the effective date of this title.

(g) During the period of forbearance required by this section, no late fees shall be assessed to the borrower's account and the borrower shall not be charged a default rate of interest.

(h) No later than 30 calendar days before the end of an initial forbearance period, a mortgage servicer shall provide written notice to the borrower disclosing both of the following:

(1) Any documentation or forms that the mortgage servicer requires the borrower to furnish or complete to be considered for an additional period of forbearance.

(2) A description of the deadlines and timelines associated with considering the borrower for an additional period of forbearance.

(i) A mortgage servicer shall report the credit obligations of borrowers under a disaster-related forbearance plan in compliance with the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.). For accounts granted disaster-related mortgage payment relief pursuant to this title, a mortgage servicer shall not furnish information during the forbearance period indicating that the payments are in forbearance and shall do either of the following:

(1) Report the credit obligation or account as current.

(2) If a borrower was delinquent before the disaster-related forbearance plan, the mortgage servicer shall:

(A) Maintain the delinquent status during the period in which the plan is in effect.

(B) If the consumer brings the account current during the forbearance period, report the account as current.

3273.24. (a) A mortgage servicer shall disclose to a borrower to whom a forbearance has been granted pursuant to Section 3273.23 that the forborne mortgage payments are required to be repaid.

(b) The disclosure required by subdivision (a) is only required to be furnished to the borrower once at the beginning of the forbearance period.

(c) A lump sum payment shall not be required for a borrower who was current on the residential mortgage loan when the borrower entered forbearance.

3273.25. During the time of forbearance granted pursuant to this title, a mortgage servicer shall not initiate any judicial or nonjudicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale if the borrower is performing pursuant to the terms of the forbearance.

3273.26. Failure to comply with this title shall not affect the validity of a trustee's sale or a sale to a bona fide purchaser for value.

3273.27. (a) (1) With respect to a federally backed loan, a person shall not be held liable for a violation of this title if compliance with this title conflicts with the servicing guidelines applicable to the federally backed loan.

(2) Servicing guidelines applicable to a federally backed loan includes servicing guidelines like those issued by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), the Single Family Housing Policy Handbook issued by the Federal Housing Administration of the United States Department of Housing and Urban Development, the VA Servicer Handbook issued by the United States Department of Veterans Affairs, or a servicing handbook issued by the Rural Development division of the United States Department of Agriculture, as those guidelines existed on January 13, 2025.

(b) With respect to a residential mortgage loan that is not a federally backed loan, a person shall not be held liable for a violation of this title if compliance with this title conflicts with the servicing guidelines issued by Fannie Mae or Freddie Mac.

(c) For purposes of this section, "conflicts with" means that it is impossible to comply with this title and the person's obligation under the applicable servicing guidelines.

3273.28. The Department of Financial Protection and Innovation shall post all of the following on its website:

(a) Links to the provisions of servicing guidelines pertaining to disaster-related forbearance relief for federally backed loans.

(b) A summary of Fannie Mae and Freddie Mac guidance to assist borrowers in understanding their forbearance programs.

(c) A dedicated telephone number for borrowers seeking assistance.

3273.29. (a) It is the intent of the Legislature that a mortgage servicer offer a borrower forbearance that is consistent with the mortgage servicer's contractual or other authority. Nothing in this title requires a mortgage servicer to take any action that would require the mortgage servicer to breach the terms of an existing contract with the investor that owns or insures the residential mortgage loan.

(b) It is the intent that this title not apply to servicing guidelines that are unrelated to disaster-related forbearance relief.

3273.30. The provisions of this title are severable. If any provision of this title 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.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To avert economic and social harm by providing a structure for temporary relief to financially distressed borrowers during conditions of extreme peril to the safety of persons and property that exist due to impacts of the Eaton Fire, the Palisades Fire, and the windstorm, it is necessary that this act take effect immediately.