

## Alert: California Legislature Passes Key Provisions of the Homeowner Bill of Rights

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On July 2, 2012, the California State Senate and Assembly passed a pair of identical anti-foreclosure bills, SB 900 (approved 25-13) and AB 278 (approved 53-25), which promulgate significant portions of the California Homeowner Bill of Rights legislative package promoted by California Attorney General Kamala Harris. The Homeowner Bill of Rights adopts many of the core provisions of the national mortgage settlement reached earlier this year with the nation's five largest mortgage servicers. SB 900 and AB 278 would extend the servicing restrictions found in the settlement to other mortgage servicers in California, although the legislation will primarily impact entities that conduct more than 175 foreclosure sales per year in the state. The legislation is applicable to first-lien mortgage loans secured by owner-occupied principal residences not exceeding four dwelling units.

The major provisions of SB 900 and AB 278 include the following:

Dual Track Foreclosure Ban – The legislation would require a mortgage servicer to render a decision on a loan modification application before advancing the foreclosure process by filing a notice of default or notice of sale, or by conducting a trustee's sale. The legislation would require that the foreclosure process essentially pause upon the completion of a loan modification application for the duration of the lender's review of that application. It is notable that the legislation lacks clear language setting forth that there is no right to a loan modification. Further, the legislation is unclear regarding the number of times that a borrower can request a loan modification.

Single Point of Contact – The legislation would require a mortgage servicer to designate a single point of contact for borrowers who are potentially eligible for a federal or proprietary loan modification application. The single point of contact must be an individual or team that has knowledge of the borrower's status and foreclosure prevention alternatives, access to decision makers, and the responsibility to coordinate the flow of documentation between borrower and mortgage servicer.

Verification of Documents – The legislation would subject the recording and filing of multiple unverified documents ("robosigning") to a civil penalty of up to \$7,500 per loan in an action brought by a civil prosecutor. The legislation would also allow enforcement under a violator's licensing statute by the State of California Department of Corporations, Department of Real Estate, or Department of Financial Institutions.

Enforceability – The legislation includes authority for borrowers to seek redress of "material" violations of the new law. Injunctive relief would be available prior to a foreclosure sale and recovery of damages would be available following a sale. Importantly, the legislation allows borrowers to seek attorney fees if successful in obtaining injunctive relief. The legislation also provides banks and servicers a right to correct violations before the filing of a suit.

SB 900 and AB 278 are currently under consideration by California Governor Jerry Brown, awaiting signature. If signed into law, the legislation will go into effect on January 1, 2013, although Attorney General Harris has indicated an expectation of immediate compliance.

Additional legislation included in the Homeowner Bill of Rights yet to make it to the Governor's desk include bills to curtail foreclosure blight, to protect tenants of foreclosed properties, to strengthen law enforcement response to mortgage and foreclosure fraud, along with the Attorney General Special Grand Jury Act, which is aimed to strengthen prosecutions of complex, multi-jurisdictional fraud and crimes.